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HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



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WEDNESDAY, FEBRUARY 6, 2008  
2:06 P.M.



SENATE RULES COMMITTEE

STATE OF CALIFORNIA

HEARING

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 6, 2008

2:06 P.M.

Reported by:

Evelyn J. Mizak  
Shorthand Reporter



APPEARANCES

MEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR ROY ASHBURN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Appointments Consultant

BILL BAILEY, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

LYNN M. DAUCHER, Director  
Department of Aging

LYDIA MISSAELIDES, Executive Director  
California Association for Adult Day Services

JACKIE McGRATH  
Alzheimer's Association

LIZ PAZDRAL, Executive Director  
State Independent Living Council

SANDRA FITZPATRICK, Executive Director  
California Commission on Aging

TERESA FAVUZZI, Executive Director  
California Foundation of Independent Living Centers





1 DERRELL KELCH  
California Association of Area Agencies on Aging  
2  
3 LLOYD T. BRADSHAW, Member  
State Board of Forestry and Fire Protection  
4  
5 GARY M. NAKAMURA, Member  
State Board of Forestry and Fire Protection  
6  
7 DOUGLAS D. PIIRTO, Ph.D., Member  
State Board of Forestry and Fire Protection  
8  
9 THOMAS L. WALZ, Member  
State Board of Forestry and Fire Protection  
10  
11 PAT MORAN  
CDF Firefighters  
12  
13 BILL KEYE  
California Licensed Foresters Association  
14  
15 MARK PAWLICKI  
Sierra Pacific Industries  
16  
17 DAVID BISCHER, President  
California Forestry Association  
18  
19 SCOTT WETCH  
Joint Labor Management Committee of the  
Forest Products Industry  
20  
21 PAUL MASON  
Sierra Club  
22  
23 JOAN M. BORUCKI, Director  
California State Lottery Commission  
24  
25 LUPITA ALCALA, on behalf of  
SUPERINTENDENT JACK O'CONNELL  
26  
27 JOHN CALDWELL  
California Grocers Association  
28  
29 JOHN HANDLEY  
California Independent Grocers Association  
30  
31 BRANCHE JONES  
Charter Schools Association



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 C. GIZA, M.D., PETER M. LOPEZ, TIMOTHY J.  
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 KAUTZ, Member, State Park and Recreation  
 Commission; Members of the State Board of  
 Barbering and Cosmetology: DEEDEE K.  
 CARLSON and SOCORRO FARIAS



P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

SENATOR ASHBURN: Rules Committee will come to order.

We have a quorum present.

We have a number of confirmations to consider today. We'll begin with Lynn Daucher, Director, Department of Aging.

Welcome.

MS. DAUCHER: Thank you.

SENATOR ASHBURN: This is your opportunity to make an opening statement. We'd like to hear from you.

MS. DAUCHER: Good afternoon, Senators and staff. Nice to see you.

I know you're here to consider the appointment the Governor has honored me with, selecting me to be Director of the California Department of Aging. I'm very honored.

I would like to give you my background. I'm a former teacher, school board member, city council member, and I served in the Assembly for six years.

I have two passions. The two passions are education and aging. And the thing they have in common is that they both focus on vulnerable, frail populations that we need to take care of.

When I was in the Assembly, I was Chair of the Aging Committee. Speaker Wesson had me serve in that spot for two years. I learned a lot about seniors during those two years.

1 I've been at CDA for eleven months, and what I've  
2 learned is that it's a well-run department, and that the people  
3 who work there are very passionate. They're there because they  
4 want to serve seniors. They really care. It's a very  
5 refreshing place to be.

6 We all have a mission, and that is that we want  
7 seniors to be able live in the community with dignity and choice  
8 for as long as they would choose to do so. The first line of  
9 defense is to keep seniors living in the community and out of  
10 institutions, and to have them have that dignity and choice.

11 The biggest issue that we face in California is  
12 the Silver Tsunami, the Age Wave, whatever you'd like to call  
13 it, the Baby Boomers are coming. Currently, seniors represent  
14 14 percent of the population. It's going to rise to 20 percent  
15 of the population, and 20 percent is a critical mass, and we're  
16 not ready. That's our biggest problem.

17 The reason we're not ready is because us Boomers,  
18 we're never going to get old, and we don't want to get old. And  
19 so, we're just -- we're in a state of denial, and therefore  
20 we're not advocating for ourselves. There's a stigma to being  
21 old, and that's another barrier that we have to really making a  
22 lot of the progress in California.

23 So, what can we do? We have an aging network in  
24 California, and it's composed of the state -- I mean, we, the  
25 federal and the state government fund money down to the locals  
26 to provide services, and home and community-based systems. We  
27 have nonprofits. We have for-profits. We have academic  
28 institutions. We have many, many volunteers.



1           The problem is, we're not linked very well. And  
2 so, what we need to do is to build the quality of the aging  
3 network, and to link -- link everybody up together and  
4 collaborate, because by doing that we can expand and strengthen  
5 the aging network.

6           The outcomes that I think I would like to see,  
7 and I'm sure you share these goals, are that we have healthy  
8 aging, that we have aging in place, meaning people do have the  
9 choice to live in the community, and that we have livable  
10 communities that people can actually live in because they're  
11 accessible to all.

12          As a legislator, I represented northern Orange  
13 County. It's really a pleasure as a statewide director for the  
14 past eleven months to represent all of California's seniors. I  
15 take that very seriously and have made an effort to visit  
16 throughout the state different areas, nooks and crannies, rural,  
17 urban, frontier, to get to know the issues that all of  
18 California's seniors and younger people face, because families  
19 are touched when -- when there's a senior member.

20          I pledge to work with all the members of the  
21 aging network. I pledge to work with you, the locals, so that  
22 we are ready for the Boomers, and that seniors in California can  
23 live out the American dream, which is to live in dignity in your  
24 own home as long as you'd like to.

25          Thank you.

26          CHAIRMAN PERATA: Thank you.

27          I've heard about these old people.

28          MS. DAUCHER: Only by hearsay.

1 [Laughter.]

2 CHAIRMAN PERATA: And if I were looking to place  
3 an old person in a nursing home, or looking for some help in  
4 that regard, what would I do?

5 MS. DAUCHER: I hope -- I hope your first call  
6 would be to your local Triple A. Now, most people don't even  
7 know what a Triple A is. It's an Area Agency on Aging, and  
8 there are 33 of those. That's the backbone of the aging  
9 network.

10 The Legislature passed, and Governor signed a  
11 bill that, when you were discharged from a hospital, if you are  
12 an older adult, you be given that phone number.

13 CHAIRMAN PERATA: The Governor signed a bill?

14 MS. DAUCHER: Yes.

15 [Laughter.]

16 CHAIRMAN PERATA: You see, Gil, I told you.

17 [Laughter.]

18 MS. DAUCHER: I believe it was Senator Alquist's  
19 bill.

20 CHAIRMAN PERATA: That explains it. Nobody here.

21 MS. DAUCHER: Nobody here, sorry.

22 But you should make that call, because one of  
23 their primary core missions is provide information and referral  
24 to seniors.

25 We need to strengthen the network that goes with  
26 that. We have -- currently have a federal grant that is going  
27 to put into place a web-based network where all of California's  
28 seniors and people who are trying to help seniors can go to

1 access and learn about information.

2 CHAIRMAN PERATA: Now, are the Triple A's  
3 redundant of what counties have or cities in their departments?

4 MS. DAUCHER: There are 33 Triple A's. As you  
5 know there are more counties, so some Triple A's span seven  
6 counties. In L.A, for example, it's L.A. City and L.A. County;  
7 it's divided. Orange County is separate. So, it varies. Some  
8 of the Triple A's are county-based; others are nonprofit. So,  
9 it's a system that has evolved.

10 CHAIRMAN PERATA: I see. Thank you.

11 SENATOR CEDILLO: Congratulations. I'm very  
12 pleased to see you here. The Governor's done an excellent job  
13 in appointing you.

14 Could you give us a little bit more information  
15 about the tsunami? What areas or what industries that it looks  
16 like are going to be impacted? Who's going to do the work when  
17 we have this phenomenon overwhelm us? Just a little more  
18 background on it.

19 MS. DAUCHER: You've touched on a very important  
20 point. I'll give you one statistic that is just staggering.

21 If you are 85 and older, you have a 47 percent  
22 chance of having some kind of dementia. Now, think about that.

23 What is going to happen? Right now, the  
24 caregiving system that we have is predominantly family and  
25 friends.

26 CHAIRMAN PERATA: Do we have a motion so she can  
27 leave? This is depressing.

28 [Laughter.]

1 MS. DAUCHER: Senator Perata, that's the stigma  
2 I'm talking about. Nobody wants to hear this.

3 [Laughter.]

4 MS. DAUCHER: I may be the stigma.

5 SENATOR ASHBURN: I don't remember what the  
6 question was.

7 [Laughter.]

8 MS. DAUCHER: I'm not going to comment on that  
9 one, Senator Ashburn.

10 As you can see, there's going to be a great need,  
11 Senator Cedillo, for caregiving.

12 Another phenomena is that we have all observed  
13 obesity as a problem, and it is being talked about that this  
14 generation of children will be first generation to pass away  
15 before their parents due to illness and disease, such as  
16 diabetes.

17 The impact that has for seniors and people who  
18 are over 85, which by the way, is the fastest growing population  
19 group in the country, is that there will be fewer of these  
20 informal caregivers -- we're very worried about that -- which  
21 puts a great deal of pressure on personal care services.

22 I'm sure you all are aware that IHSS is a very  
23 fast growing program. It's a very popular growing program. It  
24 is the reason why California looks at all good in terms of  
25 keeping people in the community. It's really the backbone of  
26 what we have in this state.

27 But that's not the entire background. There's  
28 this informal system. So, we're going to have to wrestle with



1 the fact of the needs of these Boomers who will need some  
2 assistance, and who're maybe not going to have the informal  
3 caregivers that have been there in the past.

4 It's going to thread through every aspect of  
5 lives, because when you have a senior, they have younger  
6 children and families. And so, it just doesn't touch the  
7 seniors; we just can't siphon them off because they're part of  
8 our family structure. And so, it's going to touch all of us.

9 SENATOR PADILLA: Tsunamis, and speaking of other  
10 natural disasters, I have a question seriously on the emergency  
11 preparedness side, because I think we saw during the course of  
12 Hurricane Katrina, and other events anywhere in the country,  
13 that seniors are among the more vulnerable or needy population  
14 when it comes to being in a disaster environment.

15 How and when is that being weaved into your plans  
16 in providing the services?

17 MS. DAUCHER: Well, fortunately for me, the Older  
18 Americans Act has -- has really put that requirement into  
19 place. They're focused on this, too, I'm sure as a result of  
20 Katrina.

21 I want to say at the beginning that when the  
22 fires happened in San Diego, I visited Qualcomm, and it was  
23 truly something California should be proud of.

24 However, I can also tell you that not every  
25 Triple A is as prepared as -- as that county demonstrated.

26 We asked a few years ago that every Triple A have  
27 a disaster plan, and there are five who do not at this point in  
28 time.

1                   Now, we have a law in California called the Older  
2 Californians Act. And unlike education and some other areas,  
3 what it really says is that I'm not allowed to boss around the  
4 locals. And so, that it should be a bottoms-up system, which I  
5 support. So, on a collaborative basis, we have to work  
6 together.

7                   And we are going to implement in the contracts  
8 that we sign with the Triple A's this year a requirement, and we  
9 have the ability in law, to have minimum standards. And we're  
10 going to ask them to prepare for disasters at a minimal level.  
11 We're forming a disaster work group so that we can expand on  
12 that with the Triple A's.

13                   But the minimum level is that they coordinate  
14 with their local OES so that they figure out their roles and  
15 responsibilities, and that the Triple A's know where all their  
16 frail and vulnerable seniors are, and where an emergency contact  
17 is. That, at the very minimum, is what -- is what I think we  
18 should have in place.

19                   SENATOR PADILLA: So, it's built into the  
20 contract.

21                   MS. DAUCHER: It will be built into the contract  
22 this year.

23                   We just had a conversation about that with the  
24 Triple A's. As you can imagine, some of them are nonprofits,  
25 and they -- they are struggling. And any time we ask them to do  
26 something, it's a struggle. I mean, they have -- they don't  
27 have a lot of resources. So, this will be an effort for  
28 probably these five.

1                   We just had an example up in -- around Chico,  
2                   where they lost the electricity for a weekend. And seniors were  
3                   without electricity for an entire weekend. It's cold up there.  
4                   So, that Triple A was -- and they were -- they prepared, but  
5                   they faced a whole lot of new situations that they weren't  
6                   expecting. And so, that's why we're going to form a work group  
7                   to make sure that our seniors in California are protected.

8                   SENATOR PADILLA: Other than just inserting  
9                   general language into contracts such as, "You are required to do  
10                  X for a part of your responsibilities to provide Y," how much do  
11                  we go beyond that in terms of specifying specific plans?

12                 Are they required to submit specific plans to  
13                 you? How do we hold them accountable if they fall short in the  
14                 event of an emergency?

15                 MS. DAUCHER: We have a very extensive monitoring  
16                 system. And they will submit an update to their plan, and we  
17                 will, you know, check to make sure that the disaster goal is  
18                 included.

19                 As I say, most of the --most of the Triple A's  
20                 have done so. And certainly, if you're part of the a county  
21                 system, you've done so, because the counties have had this  
22                 requirement and have worked on this, you know, for years.

23                 It's really the nonprofits that struggle  
24                 sometimes to get the attention of the OES system. They say,  
25                 "Oh, we'll take care of you. Don't worry about it."

26                 So, we at the state level need to do some things  
27                 to make sure that the lines of communication are open. And we  
28                 will, I can assure you, make sure that those plans are done at

1 the minimal level this year.

2 SENATOR PADILLA: Another question on a different  
3 topic.

4 Just last year, the Governor signed AB 2920, a  
5 bill that would include senior lesbian, gay, bisexual, and  
6 transgender Californians in the Older Americans Act.

7 You voted against AB 2920 when you were in the  
8 Legislature. Since being appointed, have you begun to implement  
9 this law?

10 And how do certain votes while you were a  
11 legislator affect your ability not just to lead the department  
12 in providing services to senior Californians, but from an  
13 internal standpoint, oversee a very diverse workforce under your  
14 jurisdiction?

15 MS. DAUCHER: I think that's a very fair  
16 question, Senator Padilla.

17 My role as a legislator was to represent my  
18 district.

19 My role as the director of the entire state is to  
20 represent the entire state, and I have done that and will  
21 continue to do that.

22 Even before I arrived at the department, my Chief  
23 Deputy, Laura Connelly, had set up work groups on this  
24 internally, to see about how we were going to implement that.  
25 We then extended those work groups and brought in some of the  
26 Triple A's to have phone conferences about it.

27 It culminated in a training which took place in  
28 November at a conference for all the Triple A's. And we hired



1 and worked with Open House, which is a group in San Francisco,  
2 to come down and provide that training, two sessions' worth of  
3 sensitivity and kind of things to do and things not to do, but  
4 really to sensitize the locals that here's a population that  
5 doesn't come forward in the -- in the generation that's old  
6 now.

7 I think that will change as time goes on, but the  
8 current LGBT population is largely hidden and afraid to -- to  
9 come out. And so, we tried to make that real by having people  
10 come and tell their life stories to the folks at the Triple A.

11 We just had a staff meeting this past week, and  
12 we have agreed to do a follow-up survey to the Triple A's  
13 saying, okay, we've done the training. Where are you? What is  
14 the next step that we can do?

15 So, we're following up on the training, and we  
16 will continue to follow up on that training.

17 SENATOR PADILLA: Thank you.

18 SENATOR ASHBURN: No questions.

19 SENATOR CEDILLO: Lynn, would you be involved in  
20 one of the concerns of this aging population, which is the  
21 effort to exploit their circumstance? I see a lot of kind of  
22 fraudulent schemes. We did a Town Hall meeting in my district,  
23 working with the local law enforcement, FBI, and all these scams  
24 that are focused on the aging.

25 And imagine as that population grows, as there's  
26 more vulnerability, what can we do? How can we work together to  
27 address that?

28 MS. DAUCHER: Thank you for offering, Senator

1 Cedillo.

2 My view of this job is not to just silo the money  
3 that we have for our programs, but it is to be the chief  
4 advocate for the seniors in California. And certainly the  
5 problem that you have just raised is -- is a big one. I hear  
6 about it all the time.

7 SENATOR CEDILLO: It's huge.

8 MS. DAUCHER: I just met with two folks. I met  
9 with some judges down in Orange County to talk about abuse, not  
10 only elder abuse but financial abuse, and to talk about what the  
11 court system could do.

12 I met with a woman, a social worker, who is  
13 intimately involved in seniors and abuse situations and talked  
14 to her. We're going to be following that up with a physician, a  
15 geriatrician from UCI, actually this week to see what we can  
16 do.

17 And as part of that, I want to look at laws to  
18 see what needs to be changed. One of the things, interesting  
19 things that came out of it, not so much on the financial abuse,  
20 but, you know, domestic violence used to be a lot like elder  
21 abuse.

22 SENATOR CEDILLO: Right.

23 MS. DAUCHER: A lot of attention was focused on  
24 domestic violence, a lot of laws were changed. So that now,  
25 domestic violence is -- there's a lot of resources for domestic  
26 violence, and the court system recognizes that.

27 When you get over 65, it kind of changes from  
28 domestic violence to elder abuse, and the laws haven't changed

1 with those resources and the same actions that occur.

2 So, we want to look at those two laws to see what  
3 maybe should happen. And I can assure you that if it rises to  
4 the level of legislation, that we will be back through our  
5 process, which is the administrative process, trying to -- to  
6 work on that.

7 SENATOR CEDILLO: Thank you.

8 CHAIRMAN PERATA: Anyone here that would like to  
9 speak in support of Ms. Daucher? You can be very brief, unless  
10 you've got an application pending or something.

11 [Laughter.]

12 MS. MISSAELIDES: Good afternoon, Senators. My  
13 name is Lydia Missaelides, and I'm the Executive Director for  
14 the California Association for Adult Day Services.

15 Our programs are a key component of the aging  
16 network that Ms. Daucher talked about, and I'll be brief.

17 I'm just here to say that I've known Ms. Daucher  
18 since she arrived in Sacramento, worked very closely with her  
19 over these last years, both in her role as a legislator and now  
20 as the director. And I'm just here to tell you, she's smart,  
21 she's capable, she has set about educating herself in a manner  
22 that I have not seen before in terms of a director about our  
23 issues.

24 And I commend her to you for your approval as  
25 Director of this department. Thank you.

26 CHAIRMAN PERATA: Thank you.

27 MS. McGRATH: I'm Jackie McGrath with the  
28 Alzheimer's Association.

1                   We're very proud to be here to support  
2                   Ms. Daucher's appointment.

3                   I appreciate that one of the numbers that she  
4                   mentioned to you was the one about the fact that by the time  
5                   you're 85, because we are living longer with illnesses, there's  
6                   about a 50 percent chance that you will have dementia.

7                   Not to further depress you, Senator Perata, but  
8                   because of the aging Boomers, what we know is there're half a  
9                   million Californians living with Alzheimer's today, and that is  
10                  going to triple by the middle of the century. So, we need  
11                  really strong advocates.

12                  Ms. Daucher was an advocate in the Legislature.  
13                  She's proven in her time at the department and, I think, before  
14                  the Committee today what an effective advocate she is.

15                  So, we urge you to support her appointment.

16                  CHAIRMAN PERATA: Thank you.

17                  MS. PAZDRAL: Hi. My name's Liz Pazdral. I'm  
18                  the Executive Director of the State Independent Living Council.  
19                  And we are a body that's appointed by the Governor to advise the  
20                  Governor and the Legislature about independent living for people  
21                  with disabilities.

22                  And I won't take a lot of your time, but I'm  
23                  really honored to speak on behalf of Director Daucher because  
24                  one of the things I've really appreciated about her approach is  
25                  how she has seen the similarity between the issues that both  
26                  communities face, the people trying to live independently with  
27                  disabilities and people living independently with aging are  
28                  facing. We're all struggling for transportation, for self-



1 determination, for autonomy.

2 I also don't want to depress you any further,  
3 but --

4 CHAIRMAN PERATA: Not possible.

5 [Laughter.]

6 MS. PAZDRAL: Right now, 80 percent of seniors  
7 have a disability or chronic condition. So, it's really not  
8 like it's two separate communities. It's really the same  
9 community.

10 Director Daucher has been very proactive about  
11 approaching our community and talking about solutions, including  
12 visitability, a universal design in housing, and also expanding  
13 access to long-term care and in-home care. And she's looking at  
14 options that are low cost or no cost.

15 She's also -- you know, I've seen her move from  
16 different kinds of constituencies, where she'll be in a room of  
17 riled up stakeholders, and then she'll be with some academics  
18 from UCSF, and in both environments she's really very open to  
19 new ideas and new solutions.

20 I've got something much longer that I wrote, but  
21 I want to thank you for the opportunity to speak on her behalf.

22 CHAIRMAN PERATA: Give that to the Sergeant.  
23 Thank you very much.

24 MS. PAZDRAL: Thank you.

25 MS. FAVUZZI: It's an honor to be here today. My  
26 name is Teresa Favuzzi. I'm the Executive Director of the  
27 California Foundation for Independent Living Centers.

28 Twenty-six Independent Living Centers across

1 California serve over 350,000 people each year with  
2 disabilities, many of whom are people who are over 65.

3 I'm here on behalf of my members to  
4 enthusiastically support the confirmation of Ms. Daucher. She  
5 has done a really wonderful job in collaborating with the  
6 disability community to really begin to find solutions that work  
7 for a diverse community of people who are aging. And an example  
8 of that is the Aging and Disabled Resource Centers that really  
9 came together through a collaborative process.

10 We really appreciate her engagement with us, and  
11 again enthusiastically support her confirmation. Thank you very  
12 much.

13 CHAIRMAN PERATA: Thank you.

14 MS. FITZPATRICK: Mr. Chair and Members of the  
15 Committee, I'm Sandy Fitzpatrick. I'm the Executive Director of  
16 the California Commission on Aging.

17 In statute, the Commission is to be the principal  
18 advocate for older Californians, to advise the Legislature, the  
19 Governor, and the Department of Aging.

20 The Commission unanimously and enthusiastically  
21 endorses the confirmation of Lynn Daucher for Director of the  
22 California Department of Aging.

23 CHAIRMAN PERATA: Thank you.

24 MR. KELCH: Mr. Chair, Members, Derrell Kelch  
25 with the California Association of Area Agencies on Aging, here  
26 representing the 33 Area Agencies on Aging throughout  
27 California.

28 We also had the pleasure to work with Ms. Daucher

1 when she was in the Assembly, and we came to rely on her as a  
2 friend and a champion of both the aging and disabled community,  
3 as you have heard.

4 We were very pleased when we heard that Lynn was  
5 being appointed as the Director. We knew that she would bring  
6 integrity, commitment, and leadership to the department.

7 But we were also pleased to learn that she brings  
8 a great administrative skill. She is open. She is willing to  
9 listen, and she is willing to advocate for what she believes.

10 The Area Agencies, we definitely welcome this and  
11 embrace, and are looking forward to working with Ms. Daucher.

12 We also, along with the others, encourage you to  
13 confirm her appointment.

14 CHAIRMAN PERATA: Thank you.

15 Anyone further? Any opposition?

16 Do you have family?

17 MS. DAUCHER: Yes.

18 CHAIRMAN PERATA: Are they here?

19 MS. DAUCHER: Yes.

20 CHAIRMAN PERATA: Would you like to introduce  
21 them?

22 MS. DAUCHER: Yes. I would like to introduce my  
23 husband, Don Daucher, who flew up with me today to be here.  
24 It's been awhile since he's been here, and I don't know if the  
25 memories are good or bad, but he's here.

26 [Laughter.]

27 SENATOR ASHBURN: I'll make a motion.

28 CHAIRMAN PERATA: We have motion to approve.

1 Call the roll, please.

2 SECRETARY WEBB: Cedillo.

3 SENATOR CEDILLO: Aye.

4 SECRETARY WEBB: Cedillo Aye. Dutton.

5 SENATOR DUTTON: Aye.

6 SECRETARY WEBB: Dutton Aye. Padilla.

7 SENATOR PADILLA: Aye.

8 SECRETARY WEBB: Padilla Aye. Ashburn.

9 SENATOR ASHBURN: Aye.

10 SECRETARY WEBB: Ashburn Aye. Perata.

11 CHAIRMAN PERATA: Aye.

12 SECRETARY WEBB: Perata Aye. Five to zero.

13 CHAIRMAN PERATA: Five-zero, congratulations.

14 MS. DAUCHER: Thank you, Members.

15 CHAIRMAN PERATA: Well deserved.

16 MS. DAUCHER: Thank you.

17 CHAIRMAN PERATA: Next, we have four members of  
18 the Board of Forestry: Lloyd Bradshaw, Gary Nakamura, Doug  
19 Piirto, and Tom Walz.

20 Please come forward. You can all sit up here at  
21 one time. Strength in numbers.

22 If you'd like, you can each say something briefly  
23 in your defense -- I mean as an opening statement.

24 [Laughter.]

25 MR. BRADSHAW: I'm Lloyd Bradshaw.

26 I'd like to start by introducing my wife  
27 Christine in the back of the room, who's come down from the  
28 beautiful Mt. Shasta area to be with me today and all of you.



1                   This is an interesting process that we're going  
2 through here.

3                   I hope to bring with this appointment and hopeful  
4 confirmation to the Board of Forestry 32 years of practical  
5 experience that I've gained working in the forests of beautiful  
6 Northern California, both on the coast and over in the  
7 Mt. Shasta area.

8                   I'm a second generation forester. My father was  
9 a forester who was born and raised in the Oakland area when  
10 there were farms in Oakland Hills, Berkeley Hills. I was born  
11 in Willows and raised up in McCloud.

12                  And I bring passion to the board in terms of  
13 recognizing a contribution that the forested lands of California  
14 provide to the economy and the wildlife, fisheries, and all of  
15 the amenities associated with forests.

16                  In addition, I have extensive experience in  
17 wildfire and fuels hazard reduction, which are all key issues  
18 that are before the board today.

19                  So, thank you.

20                  CHAIRMAN PERATA: Thank you.

21                  MR. NAKAMURA: Hi. I'm Gary Nakamura. I'm a  
22 public member appointee to the board, but I'm also a registered  
23 professional forester for the last 26 years. And I've been in  
24 forestry for over 33 years or so.

25                  What I hope to bring to the board is a -- I hope  
26 to bring more science and technological information, you know,  
27 to the board's rule making. And I believe my current position  
28 as an extension forester with the University of California gives

1 me good contacts to bring that science and technological  
2 knowledge to bear on rule making.

3 Thank you.

4 MR. PIIRTO: Hello. My name is Doug Piirto. I'd  
5 like to say first thank you to the Governor and to the Secretary  
6 of Resources for giving me the opportunity to be here today, and  
7 for all my supporters, and to you for evaluating whether I stay  
8 or not.

9 I want to say thanks to my wife who's here today.  
10 Her name is Mary. She's right there.

11 And today with me, if you've read my biography,  
12 you know I do quite a bit of travel to Finland, which is where  
13 my ancestors are from. And we have a cooperative agreement with  
14 the University of -- Seinajoki University. And so, Juha  
15 Tiainen, who is doing cooperation with us at our university, is  
16 here. And so, he's in the audience to learn a little bit about  
17 California government.

18 I was educated in the west, and I got my Ph.D.  
19 from UC Berkeley. I, like Gary and my colleagues here, I am a  
20 registered professional forester in California, and a certified  
21 forester with SAF, and I take great pride in that. I have a  
22 background as an applied forester, certainly as a professor and  
23 educator at Cal Poly, and I currently serve as department head.

24 And I in the past have served as a science board  
25 member for the Giant Sequoia National Monument, appointed by  
26 President Clinton and later appointed -- reappointed by  
27 President Bush.

28 I seek to be all that I can be, and I pledge to

1 the people of California that I will work diligently with my  
2 fellow board members to make practical, feasible decisions based  
3 on science and the best available information.

4 I thank you for your consideration.

5 CHAIRMAN PERATA: Thank you.

6 MR. WALZ: Mr. President, Members of the  
7 Subcommittee, thank you. I'm very honored to appear before you  
8 today.

9 First of all, I'd like to acknowledge and  
10 introduce my wife Cheryl, who's over here, and tell you a little  
11 bit about myself.

12 I am a registered professional forester. I  
13 actually grew up in the Midwest, a Minnesota boy, and came out  
14 to California in 1980. I became a registered professional  
15 forester in 1981.

16 I've been working for Sierra Pacific Industries,  
17 a private owned company and major landowner in California, and I  
18 manage about 200,000 acres for the Emerson family in Trinity and  
19 Humboldt Counties. I live in Weaverville, so I have a very  
20 first-hand experience with something that many people in  
21 California have had. And that is, we have had in the last seven  
22 years two wildfires come roaring into our community. And the  
23 first one, we lost a number of homes. And the second one, we  
24 were fortunate to stop right on the outskirts. So, I have very  
25 first-hand knowledge of the risks that we face here in  
26 California with the catastrophic wildfires.

27 I also have been involved in numerous resource  
28 organizations. And one that I'm most proud of is that I was

1 appointed to the Trinity County Resource Advisory Council. This  
2 was made up of a group of 15 people. Basically, we had a  
3 collaborative effort to try and spend money that the federal  
4 government had distributed on projects related to both fuels  
5 reduction and watershed restoration. And we came up with some  
6 really good programs that have helped and benefitted the folks  
7 in our -- in our local community and our county. It's something  
8 I'm very proud of, and I'm glad to be associated with that.

9 And like I say, I'm honored to appear before you  
10 today.

11 Thank you.

12 CHAIRMAN PERATA: Thank you.

13 Well, there are a couple things that are just  
14 more topical than chronic. So, I'm going to get those out of  
15 the way early.

16 The current budget problem that we're having is  
17 going to, I believe, force us to look at all of our agencies and  
18 departments in the state, and to set some priorities about what  
19 we can afford and what we can't afford, or things that if we had  
20 more money we could afford.

21 I'm not terribly interested in talking about  
22 things that are General Fund as opposed to free-driven, because  
23 the best I can tell, it's a dollar that's being spent that  
24 somebody has contributed, usually a taxpayer.

25 So, I would be interested, not necessarily right  
26 now but soon, if you all got together and chatted a little bit  
27 about economies that you could see in CALFIRE.

28 MR. WALZ: We're the Board of Forestry.



1                   CHAIRMAN PERATA: Yes, but CALFIRE is the --  
2 would you like to be a fireman with a little hat on, drive fast.

3                   [Laughter.]

4                   CHAIRMAN PERATA: But I would be very interested  
5 in knowing from your perspective places where economies could be  
6 made. And within that, sometimes I know we add layers of  
7 bureaucracies to sort of obfuscate or slow down things that we  
8 don't like. And I've participated in that throughout my career.

9                   But it's getting to a point now where we have to  
10 make some very tough choices. And frankly, if it's a  
11 bureaucracy and a redundant function, or something that could be  
12 done by somebody else, and the choice is between doing that and  
13 providing aid for senior citizens who have dementia, it ain't  
14 even a contest for me.

15                   So, rather than having us take a chain saw to it,  
16 it'd be much better if you -- I like to use things that you're  
17 familiar with.

18                   [Laughter.]

19                   CHAIRMAN PERATA: I would be very interested in  
20 what you had to say. You could do that in the form of an  
21 unanimous letter, or e-mail, or you could take credit for it and  
22 put your name on it.

23                   But I know you deal with timber harvest, whatever  
24 that is. I had a chance to tour SPI and -- I was about to say  
25 the factory that makes lumber -- a lumber mill. City boy.

26                   [Laughter.]

27                   I was impressed. I also learned a little  
28 something about carbon sequestration, which was fascinating to

1 me. But I also know that little knowledge is what ruins  
2 things.

3 But I did get an appreciation for what goes on  
4 and some of the issues. I got treated to a little forest fire  
5 while I was there, which was quite nice. I thought the Emersons  
6 went out of their way so show me that.

7 So, those are concerns that I have.

8 You have a Fire Plan coming out. Can you give us  
9 a little sense about it, since it's very topical now.

10 By the way, I see a difference between San Diego  
11 fires and Weaverville fires.

12 MR. NAKAMURA: That's good. There is a big  
13 difference.

14 I'm on the Resource Protection Committee of the  
15 Board of Forestry. We have four committees, and our committee  
16 is reviewing the 1996 Fire Plan. And we've just put together  
17 kind of an outline of the major issues that had we'd like to  
18 update of the '96 plan.

19 Yesterday, we were to meet with the State Fire  
20 Marshal and the CALFIRE Deputy Chief. Unfortunately, the Fire  
21 Marshal took ill, so we weren't able to meet up with her. But  
22 we do know that the Fire Marshal is developing their own Fire  
23 Plan. So, we wanted to merge the two and make sure that we had  
24 a Fire Plan that dealt with structures, the way they're  
25 constructed, fuel breaks, and then fire-safe defensible space  
26 around the home. So, it's kind of an integrated approach to  
27 fire protection.

28 CHAIRMAN PERATA: Now, you have two separate

1 plans that are going to be merged?

2 MR. NAKAMURA: Well, the first I heard of the  
3 fact that the Fire Marshal was developing their own plan was  
4 when I --

5 CHAIRMAN PERATA: This is kind of what I was  
6 referring to earlier.

7 MR. NAKAMURA: Well, it was when I saw -- and I'm  
8 not even sure I'm supposed to tell you that I saw this, but  
9 there is a plan I saw yesterday.

10 CHAIRMAN PERATA: Oh, trust us.

11 [Laughter.]

12 MR. NAKAMURA: And it was quite comprehensive.  
13 So definitely, we ought to be talking. And that's why we had  
14 arranged this meeting. Actually, we had arranged to meet with  
15 the Fire Marshal back in January, but for scheduling reasons we  
16 couldn't, so we said February. She got ill, so now it's March.

17 So, we want to definitely start to talk. It kind  
18 of cramps our style. We have day jobs, so we don't -- you know,  
19 we're here, you know, two days out of the month and it's hard to  
20 schedule things to meet with these people.

21 CHAIRMAN PERATA: I think we have day jobs, too.

22 MR. NAKAMURA: So, we're on schedule to, I think,  
23 early in 2009, come out with a 2009 Fire Plan that looks  
24 forward, kind of reviews how well the '96 plan was implemented,  
25 those kind of things.

26 CHAIRMAN PERATA: One of the things you should  
27 look at is, if you were going to have one agency, not two, you  
28 see, not knowing anything, I would guess that you probably could

1 figure out in a forest how to deal with structure fires, wild  
2 guess. And defensible areas you might know more about that, or  
3 at least as much about it as the Fire Marshal, who I don't know  
4 personally. It's that kind of stuff.

5 MR. NAKAMURA: I agree.

6 CHAIRMAN PERATA: You don't to. I'm going to  
7 vote for you anyway.

8 [Laughter.]

9 CHAIRMAN PERATA: You weren't part of the  
10 Governor's Blue Ribbon Commission that looked into the Southern  
11 California fire.

12 The question is, the Governor came out -- and he  
13 may have rescinded it already -- but he thought that a good way  
14 of making sure that we had enough tankers and trucks and  
15 canteens was to affix a fee to all homeowners in the State of  
16 California, which I'm not necessarily opposed to, but I probably  
17 could get there really fast.

18 And do you have any sense about it? You saw  
19 that, what went on, how it was handled.

20 MR. WALZ: I'll start with that one.

21 I think the most important thing that we see as  
22 the Board of Forestry is that California has a really good  
23 infrastructure in terms of trying to react to catastrophic  
24 wildfire. The department has done a wonderful job of making  
25 sure that they have resources, trying to move according to  
26 weather predictions, and things like that.

27 Where I think we've failed, and I think that this  
28 board is certainly concerned, is that we want to be proactive.



1 We want to get the landscape moving in a direction where the  
2 risk of catastrophic wildfire is going to be lessened. And that  
3 has been a primary motivating factor, I think, for every member  
4 on the board, is let's be proactive.

5 Fighting the fire is certainly important. Those  
6 resources are important. But we spend a lot of money at it, and  
7 then it's done, and we really didn't accomplish much after that.  
8 So, we want to be proactive.

9 CHAIRMAN PERATA: Do you have any policy? Do you  
10 get engaged in this on a policy level, or is it all the other  
11 people?

12 MR. WALZ: It will start with the Fire Plan. I  
13 think if we can direct that and move that Fire Plan in a  
14 direction where the -- where the department's key goal, key  
15 focus, is to let's make sure the landscape is in the correct  
16 condition. That's going to help.

17 CHAIRMAN PERATA: I guess under the  
18 circumstances, we should hope that there are no fires this year,  
19 since you won't have a chance until next year to look at the  
20 plan.

21 This is more depressing than talking about  
22 getting old.

23 How are we doing with the salmon, another  
24 disaster? We've had some devastating problems. How are we  
25 doing with that?

26 MR. BRADSHAW: We do the best we can with what we  
27 have.

28 CHAIRMAN PERATA: Ah.

1                   MR. BRADSHAW: And, you know, the issues before  
2 the Board of Forestry are complex, and there're many polarizing  
3 diverse views. And our staffing is very limited in terms of  
4 board staffing. We rely -- currently rely on CALFIRE and  
5 technical advisory committees.

6                   With the review of the threatened and impaired  
7 watershed issues, which all ties into anadromous fish, we've  
8 recruited and have had very positive relationships with a  
9 technical advisory committee that Gary Nakamura is the chairman  
10 of.

11                   These issues are very science-based in terms of  
12 the detail. And this brings a level of expertise that  
13 transcends beyond the board members and allows us to make the  
14 most informed decisions based on the current science that's  
15 available.

16                   MR. NAKAMURA: I understand that there are some  
17 people who are disappointed with the board's action on 2112,  
18 that it didn't go far enough in protecting the coho, didn't  
19 protect all the anadromous, and so on and so forth.

20                   I guess I would say that in passing 2112, the  
21 board moved the ball down the field in terms of the coho  
22 recovery plan, and that I wouldn't -- I wouldn't let the  
23 inability to achieve perfection or a comprehensiveness stand in  
24 the way of, you know, doing some good.

25                   So, and the board understands and has long  
26 understood that what we did with 2112 is just the beginning. It  
27 is not the end of our work on the coho.

28                   Just in a board meeting today, we were talking

1 about a more comprehensive look at a cumulative impacts  
2 assessment, you know, all the other broad array of roads, things  
3 that weren't taken up in 2112.

4 CHAIRMAN PERATA: Well, you have to appreciate  
5 that we really put a high premium on perfection here in this  
6 building.

7 [Laughter.]

8 MR. NAKAMURA: But you do things on an interim  
9 basis and don't wait --

10 CHAIRMAN PERATA: Yes, but once we do them, boy,  
11 they're perfect.

12 [Laughter.]

13 CHAIRMAN PERATA: Let me ask you this.

14 It would seem to me that one agency that would be  
15 involved would be Fish and Game. How do you guys interact?

16 MR. NAKAMURA: We're developing a joint policy  
17 statement with Fish and Game. I'm not part of that subcommittee  
18 that's reviewing that, so I can't give you the gory details on  
19 it. But we are working and in discussion with them, coming up  
20 with a joint policy statement. So, that's a beginning.

21 CHAIRMAN PERATA: Is there such a thing as a lead  
22 agency? Who's got the primacy of jurisdiction?

23 MR. NAKAMURA: Well, I don't know legally who  
24 does, but I would say that Fish and Game has. They're there to  
25 protect the fish, and the Board of Forestry and forest  
26 management is a part of that, but there's a lot more involved  
27 with protecting the fish than forest management.

28 So, I would assume that Fish and Game was the

1 lead on that, and that the board was doing what it can with the  
2 resource area that it's responsible for.

3 CHAIRMAN PERATA: I wasn't going to blame you for  
4 it.

5 SENATOR ASHBURN: There were so many fires that  
6 we sort of lose track of one event superseded by another.

7 But if you'll think back to the devastating fire  
8 at Tahoe, there was considerable information presented that the  
9 entity in that area, the Tahoe Conservancy, had in fact impeded  
10 the ability of homeowners to clear the brush around their  
11 properties to reduce the fuel source in order to minimize the  
12 effect of a fire, should it occur.

13 I have had heard stories of this same kind of  
14 problem all over California. But in this particular instance,  
15 it seemed to be very, very strong, on point, not much dispute  
16 except by those who were directly in the line of fire for  
17 having -- pardon that pun -- for having caused what they caused.  
18 But it's amazing how people escape the criticism.

19 Let me ask it this way. Is it true, and what  
20 kind of actions has your board taken? Because I'm interpreting  
21 that you are the folks who are responsible for clearing the fuel  
22 load, setting the policies for that. We talked about having a  
23 good response when the fire breaks out.

24 The issue here is, what do we do in our forest to  
25 make sure our forest is healthy, and that we make sure that we  
26 protect folks before the fire breaks out?

27 But I want to know if this agency was directly  
28 responsible for making this fire worse than it needed to be?



1 MR. NAKAMURA: First a correction for the record.  
2 I don't believe it was the California Tahoe Conservancy that --  
3 it wasn't their rules.

4 It was the Tahoe Regional Planning Agency, and  
5 then probably the Lahontan Water Board to a certain extent.

6 SENATOR ASHBURN: I stand corrected, thank you.

7 MR. NAKAMURA: And the reason I say that is  
8 because I know that the California Tahoe Conservancy, which has  
9 ownership of some private parcel -- they bought back development  
10 rights from landowners so they could kind of put it in  
11 preserve -- that they did do their thinning, and that that  
12 actually acted as a fuel break.

13 So, I just wanted to defend California Tahoe  
14 Conservancy.

15 As to the TRPA and the Lahontan, I'll let my  
16 colleagues address that.

17 [Laughter.]

18 SENATOR ASHBURN: There's no doubt about your  
19 confirmation. You are very adept.

20 [Laughter.]

21 MR. WALZ: The first thing you have to remember  
22 is the ownership pattern in the Tahoe Basin. About 80 percent  
23 of the land base is federally owned. And so, when we're talking  
24 about landscape and treating the forest condition, that fire  
25 started in a remote area and blew into the South Tahoe area.

26 And what you have is land -- private landowners  
27 may not have been able to do the fuels reduction, but the start  
28 of that fire, and the dramatic increase as it blew into town was

1 the result of having thousands of acres surrounding the  
2 community that wasn't treated.

3 So, the Board of Forestry has very little ability  
4 to direct the federal government to do things. And what we have  
5 focused on is trying to get landowners as much relief as  
6 possible so that they can move quickly. We have a specific  
7 exemption within the Forest Practice Rules that allows them to  
8 operate on their private property to reduce the fuels, but they  
9 are constrained by both the TRPA and the -- and the lack of  
10 being able to do on the federal property what they can do under  
11 our rules.

12 SENATOR ASHBURN: I'll stipulate that the federal  
13 government was guilty of impeding the thinning of the forest  
14 that caused the fire to be bigger when it arrived on the private  
15 property.

16 I want to know if the Tahoe Regional Planning  
17 Agency was responsible through their policies for causing a  
18 problem to be bigger than it needed to be, because people were  
19 impeded in clearing out the brush? Yes or no.

20 MR. BRADSHAW: Short answer, yes. In addition,  
21 there were other players involved and a general perception that  
22 that area is bullet-proof. The Regional Water Quality Control  
23 Board, TRPA, local fire departments, CALFIRE and the board have  
24 attempted over the years to address this issue.

25 There's no infrastructure in that area to deal  
26 with handling fuels. Saw mills are gone. There's a different  
27 perception of that area and an attitude of leaving forests alone  
28 and they'll be fine, a major public land base that is not

1 managed in terms of fuel hazards. So, it's a combination.

2 And this was a predictable event. I was involved  
3 with the California Forest Products Commission and Dr. Tom  
4 Bonnicks, and went up in advance of this fire and called it to a  
5 T. He said, this is going to happen. It will happen in the  
6 southwest portion of the Tahoe Basin, and it will burn this  
7 direction, and homes will be lost.

8 And that was an effort to bring the regulatory  
9 agencies together to address the issue. CALFIRE and the Board  
10 of Forestry started about three or four years ago holding  
11 meetings, joint meetings with them, to address the issue of not  
12 allowing homeowners to clear their lands. In addition,  
13 expanding it out into the wild forested areas, not only the --  
14 we call them woolies -- the wildland interface, urban  
15 interfaces, because there's two different layers involved here.

16 Efforts were made. It ended up in just  
17 frustration because of the -- the layers of regulation and  
18 bureaucracy that were -- were in place.

19 This task force is addressing those issues  
20 again. And we as a board are monitoring the progress of that  
21 Blue Ribbon Commission task force, and the report should be out  
22 within the next couple of weeks.

23 CHAIRMAN PERATA: Given that there's so much  
24 that no one can control, is the answer that we shouldn't be  
25 building homes?

26 MR. BRADSHAW: I have an answer, but I'll let  
27 someone else talk.

28 MR. PIIRTO: Certainly land management planning

1 is an important part for counties and the state to do. The  
2 state has put out fire hazard maps, and certainly insurance  
3 companies ought to pay attention to that in relationship to  
4 those kinds of things.

5 Fire protection planning is taking those fire  
6 hazard zones into account now as they staff and build their  
7 stations, so that's an important part of how we develop.

8 But 38 million people are going to become 76  
9 million people within next 50 years. So, these problems are  
10 going to continue to become bigger and bigger for us.

11 You are right. There are significant layers of  
12 bureaucracy here between the Tahoe Regional Planning Commission,  
13 the Regional Water Quality, CALFIRE, the Board of Forestry.

14 CHAIRMAN PERATA: Somebody had the responsibility  
15 for zoning that land residential.

16 MR. PIIRTO: Exactly.

17 CHAIRMAN PERATA: And from what you're saying,  
18 they probably shouldn't.

19 I mean, if you can't control the federal  
20 government, even those of us who vote can't do that --

21 MR. PIIRTO: Those lands don't become less wild  
22 because we put a house on them.

23 CHAIRMAN PERATA: Thank you.

24 MR. PIIRTO: Natural fires are an event that will  
25 occur. Landslides are an event. Water problems, flooding  
26 problems, et cetera.

27 And we seem to forget that. We seem to think  
28 it's become an urban landscape as soon as we put the house



1       there.

2                   And it's my position that we really need to be  
3 professional about how we approach the management of those  
4 forests. And professional foresters ought to be involved in  
5 what trees stay, what trees go, as we think about fuel  
6 reduction.

7                   And then that has a significant cost associated  
8 with it. Who's going to pay for that.

9                   I know that there was a proposal for a bioenergy  
10 plant in the Lake Tahoe area. It didn't get funded. Had that  
11 plant been there, some of those fuels could have been utilized.

12                   And we had the same kinds of problems in the Lake  
13 Arrowhead area with reference to what do we do now when we had  
14 all the bark beetle kill.

15                   So, we need to think about it. And we're in a  
16 climate change worry at this time, global warming, alternative  
17 fuels, clean fuels, green fuels. And we have a waste stream  
18 like no tomorrow. We ought to think about locating bioenergy  
19 plants in -- in certain locations where it's economically  
20 feasible to transport those biofuels to those locations so that  
21 we can better manage our forests and dispose of this waste  
22 stream.

23                   CHAIRMAN PERATA: Thank you.

24                   SENATOR ASHBURN: Thank you.

25                   CHAIRMAN PERATA: Straight forward answers, not  
26 so bad. Didn't lose the audience. The Governor will probably  
27 withdraw your --

28                                   [Laughter.]

1 CHAIRMAN PERATA: Anyone here in support of any  
2 or all? Package deal.

3 MR. MORAN: Mr. Chair and Members, Pat Moran  
4 with Aaron Read and Associates.

5 On behalf of our client, the CDF Firefighters, we  
6 encourage you to support the appointment of these candidates.

7 Thank you.

8 MR. KEYE: Mr. President and Members, I'm Bill  
9 Keye, California Licensed Foresters Association.

10 These four gentlemen are professional colleagues,  
11 registered professional foresters, and our organization strongly  
12 supports their appointment and confirmation.

13 CHAIRMAN PERATA: Thank you.

14 MR. PAWLICKI: Mark Pawlicki, Sierra Pacific  
15 Industries. We strongly endorse all four.

16 CHAIRMAN PERATA: Thank you.

17 MR. BISCHEL: Mr. Chairman and Members of the  
18 Committee, David Bischel, President of the California Forestry  
19 Association.

20 We represent over 4 million acres of working  
21 forests and the forest industry here in California, and strongly  
22 support the confirmation of all four members.

23 Thank you.

24 MR. WETCH: Mr. Chairman and Members, Scott  
25 Wetch on behalf of the Joint Labor Management Committee of the  
26 Forest Products Industry, including the carpenters, machinists,  
27 wood workers, paper workers, pulp workers, miners and several  
28 others, in strong support of all four of the board members.

1                   Particularly, we'd like to draw attention of our  
2 support to Mr. Walz. As a resource manager for Sierra Pacific  
3 Industries, he works directly with the rank and file members of  
4 the Carpenters Union on a daily basis. We believe that that  
5 experience gives him an uncommon understanding of what it is  
6 like for a person working in this industry, and how board  
7 decisions impact the working men and women within the timber  
8 industry. And we think that's a very valuable asset that he  
9 brings to the board. And particularly, I'd like to draw  
10 attention to our support for his appointment.

11                   Thank you.

12                   CHAIRMAN PERATA: Thank you.

13                   Anyone here in opposition?

14                   MR. MASON: Good afternoon. Paul Mason with  
15 Sierra Club California.

16                   And I'm not actually in opposition, but I'm not  
17 actually in support either. I'm sort of in that sweet spot  
18 right in between, where I've got some concerns that I felt like  
19 we should share and not just rely on our frustration.

20                   First, I want to very much thank the Chairman for  
21 your attention to this issue over the last several years. It's  
22 been very helpful to have, you know, the Senate leadership's  
23 focus on the Board of Forestry, which is easy to get lost in  
24 sort of the backwater over there at the Resources Agency because  
25 it's a relatively small board, you know, minimal staff.

26                   But it has a very large impact across the  
27 landscape, particularly when we start looking at the way it  
28 impacts some of the issues that are near and dear to --

1 particularly in Northern California -- such as salmon.

2 And that's the issue that has brought forth our  
3 concern right now. And it's something that you had a lot to say  
4 about the last time we had board members, about a year-and-a-  
5 half ago before this Committee, because we've been in this  
6 ongoing situation where the National Marine Fisheries Service,  
7 the federal agency responsible for salmon, has for roughly the  
8 last decade been saying the forest practice rules are not  
9 adequate to protect salmon.

10 When they come back and look at the status of  
11 salmon, they actually recently moved the coho salmon in northern  
12 Central California, from your district up to Humboldt County,  
13 from Threatened to Endangered because the population keeps  
14 collapsing.

15 Just last week, we saw the articles in the  
16 newspaper about how chinook salmon in the Sacramento River are  
17 absolutely crashing, and we're going to have a hard time finding  
18 wild salmon at the market next year. And our friends in the  
19 fishing industry are certainly going to feel that.

20 So, I just want to highlight that the situation  
21 with salmon has not been solved. It has not gotten better. And  
22 we continue to be frustrated with the lack of proactive action  
23 at the board.

24 There was reference to the rule package that was  
25 passed this summer as being a step in the right direction.

26 I wouldn't characterize it that way because it  
27 doesn't proactively address any of the known shortcomings with  
28 the forest practice rules.



1                   So, what I'm really looking for is a commitment  
2 from the members and from the board that we're going to keep  
3 moving forward in a steady manner, and not keep moving on this  
4 pace where it takes -- you know, the last substantial  
5 improvements to the forest practice rules were in the year 2000.  
6 If we wait another eight years, it may not be worth doing at  
7 all.

8                   So, those are the concerns that I wanted to  
9 express.

10                  I also want to clarify that I've worked closely  
11 with -- particularly with Gary Nakamura as one of the members of  
12 the Forest Practice Committee and the Chair of the Technical  
13 Advisory Committee. He's been, you know, an exceptional  
14 addition to the board. I think it's very helpful to have  
15 somebody with his, you know, both critical thinking skills as  
16 well as ability to lead a discussion.

17                  I think all of the board members are generally  
18 well intentioned, even if some of them are, you know, timber  
19 company executives. They're all people who I think --

20                  MR. WALZ: I got promoted.

21                               [Laughter.]

22                  CHAIRMAN PERATA: Congratulations.

23                  MR. MASON: I do appreciate all of their  
24 commitment to, you know, an essentially unpaid position, but we  
25 do need to make progress before we completely lose the salmon  
26 and other endangered species in California.

27                  Thank you.

28                  CHAIRMAN PERATA: Thank you.

1 I just want to underscore, first of all, I'm very  
2 sensitive to the fact that you're all volunteers, and there's a  
3 limited amount of time. As you said, you all have day jobs.

4 But probably the best anybody on a board like  
5 yours can do is just continue to bedevil the bureaucracy.

6 It's amazing how good people adapt to sort of a  
7 certain pace. After a while, you wake up and you realize that  
8 are no coho salmon.

9 Or, there are a bunch of houses being built in  
10 places that you have to say, "What the hell's going on?"  
11 Taxpayers should be upset because we're subsidizing those homes  
12 by going in there and having to bail everybody out.

13 So, I just urge you that there hasn't been a  
14 great expectation of the board. I think you're under the  
15 generation of leadership that can change that.

16 But I'd be very interested in knowing what you  
17 think should be done differently, where there are too many wires  
18 crossing. You know, we'd have a lot less difficulty if there  
19 was just one.

20 And I know how redundancies come in, because  
21 everybody who gets elected has to take a whack at things, and no  
22 one's quite understood it the way I understand it, so you pass a  
23 law. And then you've got it on top of something else.

24 I want to thank you for what you're willing to  
25 do, and what you're about to do.

26 We'll never know a damn thing unless you tell  
27 us. I could find Weaverville, I think, but not because I've  
28 been there.



1 I've heard of San Luis Obispo, though. I've  
2 heard nice things about that.

3 So anyway, I would thank you and take a motion to  
4 approve.

5 SENATOR ASHBURN: Motion on all four.

6 CHAIRMAN PERATA: On all four. Call the roll,  
7 please.

8 SECRETARY WEBB: Cedillo.

9 SENATOR CEDILLO: Aye.

10 SECRETARY WEBB: Cedillo Aye. Dutton.

11 SENATOR DUTTON: Aye.

12 SECRETARY WEBB: Dutton Aye. Padilla.

13 SENATOR PADILLA: Aye.

14 SECRETARY WEBB: Padilla Aye. Ashburn.

15 SENATOR ASHBURN: Aye.

16 SECRETARY WEBB: Ashburn Aye. Perata.

17 CHAIRMAN PERATA: Aye.

18 SECRETARY WEBB: Perata Aye. Five to zero.

19 CHAIRMAN PERATA: Five-zero, thank you.

20 MR. NAKAMURA: Thank you very much.

21 CHAIRMAN PERATA: We're going to give the scribe  
22 a break.

23 [Thereupon a brief recess was taken.]

24 CHAIRMAN PERATA: Our final is Joan Borucki, the  
25 Director of the California State Lottery Commission.

26 Joan, come on up. Welcome.

27 MS. BORUCKI: Thank you, Senator.

28 CHAIRMAN PERATA: You may open.

1 MS. BORUCKI: Thank you.

2 Good afternoon, Mr. Chairman, Members.

3 My name is Joan Borucki. I'm here today to ask  
4 for confirmation as the Director of the California Lottery.

5 Before I begin to talk about some of my  
6 accomplishments at the Lottery during my tenure, I'd like to  
7 address the subject of an employee event held last November.

8 As with everything that happens at the Lottery, I  
9 take full responsibility. I am sorry. I am very embarrassed,  
10 and I'm angry with myself for having let this happen.

11 Would I do this same event again? No.

12 When I approved this event, I did so with the  
13 knowledge that this has been going on at the Lottery for the  
14 past twenty years, and with advice from my chief counsel that it  
15 was appropriate.

16 I understand from legislative staff that there is  
17 a Legislative Counsel opinion that is contrary to the advice I  
18 have received.

19 In anticipation of receiving this opinion, I have  
20 directed my staff that we will not be holding these events in  
21 the future.

22 Controller Chiang is currently auditing these  
23 past expenditures, and I have directed my staff to provide the  
24 Controller with any and all information.

25 As a part of state government, I recognize that I  
26 am held to a higher standard of responsibility. And as Director  
27 of the Lottery, I have an even higher responsibility to my  
28 beneficiary. I recognize the importance of carefully managing

1 my funding to public schools. I understand the gravity of my  
2 role as Director of the Lottery, and I've taken action to ensure  
3 that this will not happen again.

4 If you will permit me, I'd like to continue and  
5 talk a little bit about some of the more positive  
6 accomplishments during my tenure.

7 What has been missing at the Lottery is a vision  
8 for long-term growth. I have rallied the Lottery Commission,  
9 the employees, the education community, and our retail network  
10 to support my long-term business plan.

11 I have pursued three core strategies. First,  
12 reverse the declining sales of Lotto-style games.

13 Second, erase the negative view of the Lottery.

14 And third, enhance our consumer protection and  
15 law enforcement efforts.

16 In the short time that we have been executing my  
17 growth strategy, there has been a 10 percent lift in sales at  
18 lower jackpot levels, which strengthens my belief that I have  
19 found a winning formula to increase revenues and profits at the  
20 Lottery. In the first week -- in the last week alone, there  
21 has been a 7 percent increase in all games in their sales.

22 In real dollars, this 7 percent equates to a  
23 single week increase of 3.7 million in sales, or  
24 one-and-a-quarter million dollars for education.

25 In order to reverse the negative imagine of the  
26 Lottery, I have spent time working with education to formulate a  
27 message that gets the word out that 95 cents of every dollar  
28 spent on Lottery products is returned to the community.

1 I have also taken actions to strengthen efforts  
2 in consumer protection and law enforcement. I am the first  
3 director to mandate that all retailers have a device that allows  
4 players to check for winning numbers themselves and not have to  
5 rely on a retail clerk.

6 I strongly believe that all gaming must be  
7 responsible gaming. To that end, I have taken a strong stance  
8 to protect my consumers by directing my law enforcement  
9 division, for the first time in its 22-year history, to conduct  
10 enforcement operations in the areas of retail fraud and  
11 under-age gaming. I have more than doubled the amount of  
12 funding that the Lottery provides to the Office of Problem  
13 Gambling, and I have created a year-around public service  
14 announcement campaign to discourage problem gambling.

15 I am proud to have answered Governor  
16 Schwarzenegger's challenge when he asked me to serve as the 19th  
17 Director of the California Lottery. As someone who has  
18 dedicated her entire career to public service, I know the  
19 Lottery can do better, that it can increase sales and send even  
20 more money to California's schools, and do so in a responsible  
21 manner.

22 I have a daughter in public school, and I have  
23 seen first-hand the value teachers put on the extra funding that  
24 the Lottery can provide.

25 I thank you for your time. Thank you for  
26 listening. I am ready to answer any questions you have of  
27 me.

28 CHAIRMAN PERATA: Any family here?



1 MS. BORUCKI: No.

2 CHAIRMAN PERATA: Members.

3 SENATOR ASHBURN: I appreciate your opening  
4 comment with respect to the questions raised about the employee  
5 appreciation dinner.

6 I would have preferred that an audit and the  
7 results of an audit be before us today, an independent look at  
8 what took place, what was appropriate, what was not  
9 appropriate.

10 We talked with the State Controller's Office.  
11 That audit is not ready. I don't think the audit should be  
12 rushed.

13 I am troubled, however, that you did not on your  
14 own ask for an evaluation, an audit of what took place. It was  
15 the State Controller on his own initiative that began the audit  
16 on this particular event.

17 Why did you not, when you became aware that there  
18 were questions, when there was a press account of problems, why  
19 did you not initiate some kind of an independent review?

20 MS. BORUCKI: Senator, Controller Chiang is the  
21 auditor for the California State Lottery. And at the time of  
22 the Public Records Act request, he had already initiated and  
23 sent his auditors over, asking for the same information and had,  
24 I guess, beat me to the punch, so to speak, and had started  
25 prior to my being able to pick up the phone and call him.

26 We have since been trading phone calls. Staff  
27 has been cooperating. His staff is on premise, and we've been  
28 working together.



1                   SENATOR ASHBURN: It's interesting to me that you  
2 decided that there'll be no further events. I mean, I don't  
3 know that an employee appreciation event for state workers that  
4 are engaged in a different line of work -- the work that these  
5 particular employees do is quite different than that which most  
6 state workers are engaged in.

7                   So, on what basis have you decided to just cancel  
8 it altogether?

9                   Again, not having the facts that would come out  
10 of an audit, I'm concerned about, you know, overreaction on your  
11 part. That's sort of what I've seen here. It's like a zig-zag  
12 in your own behavior in response to this thing. Your first  
13 reaction is this; your next reaction is extreme, and then you  
14 have another extreme reaction. You've been all over the map on  
15 this.

16                  MS. BORUCKI: Actually, Senator, I don't think my  
17 action to tell staff that we're cancelling all the events in  
18 light of all the conflicting legal opinions on the legality of  
19 it would be wrong.

20                  Now, if the Controller's audit comes back, and he  
21 finds that those kind of expenditures are appropriate, then  
22 we'll take a different course of action after that.

23                  But pending having all the facts in front of me,  
24 and having a clear and consistent legal opinion on the matter, I  
25 think it's better to put those kind of events on ice for the --  
26 for the time being.

27                  I have also asked the Attorney General's Office  
28 for a review of the legality in the statutes. And again, as you

1 pointed out, that -- like the Controller's audit -- is not  
2 available today, and that will take some time as well.

3 SENATOR ASHBURN: That's the first I've heard  
4 that. So, you're seeking an Attorney General's legal opinion to  
5 clarify the advice that you've received from internal counsel  
6 and now a conflicting opinion from Legislative Counsel's Office;  
7 is that correct?

8 MS. BORUCKI: Yes. We've asked for an informal  
9 opinion at the moment from the Attorney General's Office.

10 SENATOR ASHBURN: And when did you do that?

11 MS. BORUCKI: That happened yesterday when I  
12 became aware of the Legislative Counsel's opinion.

13 SENATOR ASHBURN: How are you going to deal with  
14 morale within the department?

15 These employees were invited to an event. They  
16 didn't set the place; they didn't set the time; they didn't set  
17 the price; they didn't set the prizes; they didn't set the  
18 entertainment. They had nothing to do with that, and they've  
19 taken a heck of a hit on this.

20 MS. BORUCKI: Employee morale is a great concern  
21 to me at the Lottery right now. It's a difficult thing to  
22 address. They don't know if they're going to be sold. They  
23 don't know if they're going to be leased. That has not helped  
24 with employee morale either.

25 What we will do is, we'll try to address it with  
26 other kinds of means of recognition that are available to any  
27 other state agency -- gold awards, silver awards -- and what I  
28 can do myself to recognize employees. And we'll do the best we

1 can without having a big event.

2 SENATOR ASHBURN: The only other possible  
3 question I can ask is if you feel that your ability has been  
4 reduced, your ability to do a good job has been reduced as a  
5 result of the controversy?

6 I've all ready described for you my reaction to  
7 your reactions.

8 Have you been damaged in your ability to do the  
9 kind of job that I would hope you'd want to do for yourself, and  
10 for the Governor, and for the people of California?

11 MS. BORUCKI: I don't believe I have been. I  
12 believe the employees are still behind me and my vision for  
13 long-term growth at the Lottery.

14 They are looking for stability in leadership and  
15 direction. I provide that. They recognize that.

16 Also, what I've been able to do to reach out to  
17 the education community, and the retailer network has helped  
18 tremendously. That's also a source of pride for the employees,  
19 too. The employees, as well as myself, the reason we're there  
20 is because they -- they and I truly want to make money for  
21 education.

22 And to actually have our beneficiary looking  
23 forward to our execution of our business plan and growth in  
24 sales is something that they have not had for a long time at the  
25 Lottery.

26 SENATOR ASHBURN: That's all.

27 CHAIRMAN PERATA: Well, I think the judgment was  
28 flawed. I don't think it's a hanging offense.

1 But I sure as hell would talk to that lawyer that  
2 thought this was appropriate. He or she probably should be  
3 doing work somewhere else.

4 There's an old saw that says, any action you take  
5 you should take with the idea that it's going to be on the front  
6 page of the Bee, or whatever.

7 I appreciate that you've been as forthright as  
8 you've been, because I was concerned that perhaps you weren't  
9 going to take one for the team, and I think it's important.

10 The Commission is a different animal, but I do  
11 know that it's hard enough to be a state employee these days,  
12 with all the wonderful benefits that they don't get, and the job  
13 that they have to do.

14 So, I think it's important to say you accept full  
15 responsibility; you screwed up, and now you're moving on.

16 But I would counsel you that with your staff, you  
17 may want to get together and go down the list of things that  
18 were done and say, "Why didn't we see this earlier?" A lot of  
19 times in retrospect, it's much easier.

20 I didn't know anybody that was for New England  
21 on Sunday. Everybody was for the Giants on Monday.

22 But the other thing I wanted to ask you, we've  
23 been told that employees at the Commission were e-mailed and  
24 asked to communicate to us that they support you.

25 I'm not asking you to comment on that, but I  
26 would like you just to know that that was out there. And it's  
27 the kind of thing that gets to be pretty insidious after awhile.  
28 People just have to be very careful.



1 I saw staff coming up here, I forget who it was,  
2 not too long ago, came up to verify. I was sort of stunned. It  
3 was the Parole Board; right? Some staff guy came up and said,  
4 "I want to add my support." Great.

5 I just inferred that that appointee was doing a  
6 really good job in the eyes of the staff person. Wonderful. I  
7 don't usually ask Bill what kind of a job he's doing with Alex.

8 MR. MABIE: He's doing great.

9 [Laughter.]

10 CHAIRMAN PERATA: For that very reason, but as  
11 long as I brought it up --

12 [Laughter.]

13 CHAIRMAN PERATA: So anyway, Joan, I don't want  
14 to belabor this.

15 I do think it's wise for you to say what you've  
16 said. Frankly, I don't know that it requires an audit to  
17 realize in retrospect this was a bad idea. I think it's  
18 important for morale boosters.

19 But had you been an elected official, you'd have  
20 to write down the name of every single person that ate a prime  
21 rib dinner and got a gift certificate.

22 So, I'm not insensitive to when you try to do  
23 nice things for your employees, some people think she's doing it  
24 wrong.

25 Anybody here in support? I didn't want to put it  
26 that way. Those who are here who are in support.

27 You don't work for the Commission, do you?

28 MS. ALCALA: No.



1                   Lupita Cortez Alcala, on behalf of the State  
2 Superintendent of Public Instruction, Jack O'Connell. He  
3 regrets he's not able to be here today. He is at an important  
4 doctor's appointment for his wife, Dory.

5                   Superintendent O'Connell believes that  
6 Ms. Borucki has done an extraordinary job in her outreach  
7 efforts to the California Department of Education, including  
8 continued sponsorship of the California Distinguished Schools  
9 program, and the California Teacher-of-the-Year program.

10                  Since her leadership at the California Lottery,  
11 she has drawn additional attention to these two programs and  
12 their honorees through marketing events throughout the state.  
13 These two events are extremely meaningful to school districts,  
14 especially to teachers. And these are two of only a few  
15 statewide recognition programs that we offer teachers in  
16 schools, and we believe they're extremely important.

17                  In addition, while the California Lottery funding  
18 only accounts for approximately 1.3 percent of the K-12 funding,  
19 which is about \$1.2 billion, this funding is critical to local  
20 schools and districts in lessening the budget impact this  
21 current budget -- with this current budget deficit.

22                  In addition, with the current leadership of  
23 Ms. Borucki, the Lottery has seen an increase from approximately  
24 20 million to 25 million in administrative savings at the end of  
25 the year, and those funds also are transferred to education.

26                  Under her leadership, she's helped raise current  
27 sales. Last week alone, this accounted for an additional \$1.25  
28 million to schools.

1                   In this tough budget year, when school districts  
2 are faced with hard decisions to cut class size reduction, or  
3 the only nurse they have in the district, this funding is going  
4 to make a difference.

5                   So the SPI, the Superintendent, especially is  
6 impressed by Ms. Borucki's willingness to be -- open up dialogue  
7 with her -- our office. She looks for ways to partner, to  
8 clarify misconceptions about Lottery funding, and find local  
9 ways to publicly honor the California Teachers of the Year. So,  
10 Ms. Borucki has a strong commitment to raising supplemental  
11 funding for K-12 education, and the Superintendent has no doubt  
12 that Joan will continue to serve the California Lottery with  
13 dedication and leadership.

14                   We strongly urge your confirmation of this  
15 appointment. Thank you.

16                   CHAIRMAN PERATA: Thank you.

17                   MR. CALDWELL: John Caldwell with Public Policy  
18 Advocates, representing the California Grocers Association.

19                   Our members and our association believe  
20 Ms. Borucki's been an excellent interim Director, and we've been  
21 very supportive of her outreach to grocers, to retailers, and  
22 other stakeholders.

23                   And would urge her confirmation.

24                   CHAIRMAN PERATA: Thank you.

25                   MR. HANDLEY: Mr. Chair and Members, John Handley  
26 with the California Independent Grocers Association.

27                   I've been involved with the California State  
28 Lottery for over ten years now as part of the retail chain. And

1 we strongly support the confirmation of Ms. Borucki.

2 Thank you.

3 CHAIRMAN PERATA: Thank you.

4 MR. JONES: Mr. Chairman and Committee Members,  
5 Branche Jones, California Charter Schools Association, second  
6 the comments of my colleague Lupita from the Superintendent's  
7 Office. Would urge the Director's confirmation at the very  
8 least be moved to the Senate so the full Senate can consider the  
9 nomination.

10 We've had a great working relationship with the  
11 Director and her staff. And that goes so far as to come to our  
12 events, providing budgetary numbers for some of our schools so  
13 they can begin to know what their funding level is from the  
14 State Lottery when they're building their budgets.

15 So with that, we'd urge an Aye vote on her  
16 confirmation. Thank you.

17 CHAIRMAN PERATA: Thank you.

18 Anyone here with an opposing point of view?

19 Seeing none.

20 SENATOR ASHBURN: Motion.

21 CHAIRMAN PERATA: We have a motion to approve.  
22 Please call the roll.

23 SECRETARY WEBB: Cedillo.

24 SENATOR CEDILLO: Not voting.

25 SECRETARY WEBB: Padilla. Ashburn.

26 SENATOR ASHBURN: Aye.

27 SECRETARY WEBB: Ashburn Aye. Perata.

28 CHAIRMAN PERATA: Aye.

1 SECRETARY WEBB: Perata Aye.

2 CHAIRMAN PERATA: We'll wait for Senator Dutton.

3 He is coming back.

4 Most of them lost interest. He got invited down  
5 to Governor's Office and didn't have to buy a ticket, so he  
6 went.

7 [Laughter.]

8 CHAIRMAN PERATA: Thank you very much.

9 MS. BORUCKI: Thank you.

10 [Thereafter, SENATOR DUTTON

11 voted Aye, making the final

12 vote 3-0 for confirmation.]

13 [Thereupon this portion of the


14 Senate Rules Committee hearing

15 was terminated at approximately

16 3:45 P.M.]

17 --ooOoo--

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EVELYN J. MIZAK  
Shorthand Reporter



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## APPENDIX

**State Independent Living Council (SILC)**

1600 "K" Street, Suite 100  
Sacramento, CA 95814  
Voice: (916) 445-0142  
Fax: (916) 445-5973  
TTY/TDD: (916) 445-5627



February 6, 2008

Senate President pro Tem Don Perata  
State Capitol, Room 205  
Sacramento, CA 95814

Thank you Senator Perata:

And other esteemed members of the Senate, for the opportunity to support the confirmation of Lynn Daucher as Director of the California Department of Aging. My name is Elizabeth Pazdral and I am the Executive Director for the State Independent Living Council, an advisory body to the Governor and Legislature regarding Independent Living Needs of people with disabilities in California. Since coming to Sacramento, it has been my privilege to both observe the work of Director Daucher and to collaborate with her. The cross of our disciplines is appropriate: the disability community and aging community share many of the same goals with regards to community integration, autonomy and long term care. Currently, about 80% of older Americans are living with at least one disability/chronic condition.

The growth in the number and proportion of older adults is unprecedented in the history of the United States. Two factors— longer life spans and aging baby boomers — will combine to double the population aged 65 and older during the next 25 years. By 2030, elders will represent more than 20% of the population. The way our government responds to the needs of this group and addresses chronic conditions will have ramifications throughout our entire society.

And it is because of the weight of this situation that Lynn Daucher is the right person for this job. Her approach is to seek collaborations with groups who have similar goals. Already she has made advances in promoting low cost, life-changing ideas such as "visitability" in housing and access to home care. She is open to new ideas about how to achieve her goals and she stays abreast of new research in relevant studies.

***The SILC Mission: To Maximize options for Independence for Persons With Disabilities.***

Director Daucher is also approachable to a wide range of constituencies. I have seen her move smoothly from a meeting full of agitated stakeholders to a conference with University academics. Professionals working in aging or disability are clear that there exists a need to maintain the progress made toward the health and independence of seniors, while increasing efforts to meet goals on other equally crucial issues. For example, the widespread existence of Paratransit programs have meant transportation for many, while a large number people still are isolated in their homes. The key to improving the quality of life for all older Californians will be collaboration between multiple and diverse groups on state and local levels, including members of the public, health care providers, government agencies and community groups. I believe Lynn Daucher is the kind of modern leader who can make that collaboration happen.

Thank you again for the opportunity to present my support of Director Daucher and please don't hesitate to contact me if you have additional questions I can answer.

Sincerely,

Liz Pazdral  
Executive Director

## DEPARTMENT OF AGING

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SACRAMENTO, CA 95834-1992  
Internet Home Page: [www.aging.ca.gov](http://www.aging.ca.gov)  
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November 19, 2007

The Honorable Don Perata  
Chairman, Senate Rules Committee  
State Capitol, Room 420  
Sacramento, CA 95814

Attention: Nettie Sabelhaus  
Rules Committee Appointments Director

Dear Chairman Perata:

Thank you for the opportunity to address the Senate Rules Committee on January 16, 2008, regarding my confirmation as Director of the California Department of Aging.

Enclosed are responses to the questions in your letter of October 29, 2007. I am available at your convenience to provide any additional information you may need prior to the hearing.

Again, thank you for your favorable consideration.

Sincerely,

A handwritten signature in black ink, reading "Lynn Daucher". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Lynn Daucher  
Director

Enclosures

**Senate Rules Committee**

NOV 19 2007

**Appointments**



**1. What do you hope to accomplish during your tenure as director of CDA? How will you accomplish these goals?**

As Director of the California Department of Aging (CDA), my top priority is to collaborate with, lead and strengthen the Aging Network so California's seniors, adults with disabilities, and family caretakers can live independently and with dignity. My goals are to prepare the Aging Network for the Baby Boomers, to prioritize and maximize resources, and to continue to improve the quality of the Aging Network.

CDA not only administers Older Americans Act (OAA) and Older Californians Act (OCA) programs, but also oversees the Multipurpose Senior Services Program (MSSP) and Adult Day Health Care (ADHC) centers. These programs, along with In-Home Supportive Services (IHSS), form the backbone of California's government-funded Home- and Community-Based Services (HCBS) system that allow seniors and adults with disabilities to live in the community.

CDA collaborates with and oversees 33 Area Agencies on Aging (AAA) to deliver and administer a range of HCBS tailored locally to address local priorities. Surrounding this infrastructure is a loose system composed of non-profits and for-profit providers, other governmental agencies, academic institutions, and volunteers. Together, this Aging Network is dedicated to promote the independence and wellbeing of older adults, adults with disabilities, and families.

California's population, like the rest of the United States, is aging. In 2000, adults age 60 and over comprised 14 percent of the State's population. In 2020, California's adults age 60 and over is anticipated to increase to 20 percent. California's population is increasingly more racially and ethnically diverse with wide disparities in socio-economic resources. Underserved seniors include people of color, lower income, and the Lesbian, Gay, Bisexual and Transgender (LGBT) population. Seniors living in rural areas also face unique challenges accessing services.

Prepare for the Baby Boomers

One of my goals to prepare for the Baby Boomers involves promoting health and wellness and developing transportation services and accessible housing. Making progress on these goals will enable seniors to avoid institutional placements. Health and wellness programs can continue to delay and compress the time at the end of life when seniors become disabled. Improved health and wellness directly increases the quality of life for seniors and has the potential to lower future health care costs. CDA has successfully competed for federal grants to implement evidence-based health and wellness programs. By working closely with non-profits and the community college older adult system, we are moving these programs into the Aging Network. Collaboration with the Department of Public Health (DPH) will also promote access to other evidence-based health related programs.

No discussion of health and wellness can ignore the staggering increase of dementia which California faces as the population ages. Of those adults 85 years and older, 47% will have some form of dementia. Of those adults 71 years and older, one in seven will have some form of dementia. California, like the rest of the country, is unprepared for



the growth in both the care needs of people with dementia and their families. Preparation will involve encouraging a healthy lifestyle, ensuring a strong network of informal and formal caregivers, strengthening and enriching our day care and ADHC systems, and providing real residential choices in the community for all income levels. Improving the quality and reach of the Aging Network will certainly help to address this growing issue.

Another way to improve the quality of the Aging Network is to focus on transportation and housing issues. The AAAs continually list transportation and housing among their highest priorities. Without accessible, affordable and available transportation and housing, seniors will be unable to age in place. My goal is to help the AAAs access federal grants for transportation, continue working on the Three Tier Driving Test Pilot Program, and promote senior-friendly roads and transit. CDA is pleased that the Governor recently signed Assembly Bill (AB) 927 which assures low-income seniors receive a proportionate share of the recently approved Housing Bond. This legislation increases the availability of senior housing for the rapidly growing number of older adults in need of low-income housing and increases the number of housing units with design features that make it easier for seniors who develop functional impairments to remain in their homes.

#### Prioritize and Maximize Resources

California faces budget problems which make prioritizing and maximizing our state resources essential. CDA is well run with a very dedicated staff. During its two years without a Director, Lora Connolly, now Chief Deputy, served as the Acting Director. With an extensive background in aging and in the California Health and Human Services Agency (CHHS), Lora Connolly led the effort to write CDA's State Plan which currently guides CDA's activities. Under her leadership CDA has run efficiently and effectively, has good morale and has advanced its mission.

Nevertheless, tight budgets in addition to the increasing aging population necessitate continual self-evaluation. For example, CDA is working collaboratively with the AAAs to evaluate and strengthen our monitoring process. Together we are wrestling with how to best provide oversight while promoting quality through technical assistance and best practices. This process of continual improvement by CDA and the AAAs will lead to a stronger Aging Network. Self-evaluation also includes "addition by subtraction." For instance, we need to ask which activities do not add value and should be eliminated or replaced. The development of the next State Plan is the formal vehicle CDA will use for its own self-assessment and improvement as well as for strengthening the Aging Network.

#### Improve the Quality of the Aging Network

Improving the quality of the Aging Network depends on collaboration. Continuing to build on our strong relationship with the AAAs is the foundation. As Director, my goal is to visit each AAA to learn firsthand about problems and concerns, successes and, most importantly, how CDA can better help them serve older adults and adults with disabilities.

Likewise, networking with leaders in the aging arena stimulates new partnerships to strengthen or add services. For example, at a recent conference, a UCLA professor discussed her research on the negative impact of daytime sleeping on wellness by residents in nursing facilities. CDA will consider using volunteer Ombudsman to educate facilities and to suggest remedies.

Within the California Health and Human Services Agency, collaboration with other departments is an important component to successful program implementation. Currently, CDA is working with the Department of Rehabilitation (DOR) on nursing home transitions and housing; the Department of Alcohol and Drug Programs (ADP) on addressing alcoholism and drug use in older adults; and the Department of Mental Health (DMH) on depression in older adults. These partnerships will break down state silos and result in a stronger, better Aging Network for older adults and the disabled.

Partnerships outside CHHS also benefit the Aging Network. A growing relationship with community college instructors is adding evidence-based courses on balance, fall prevention, medication management, and chronic disease self management. These programs, expanding in California through a federal grant, are being woven into the fabric of the Aging Network.

## **2. How does CDA provide for outreach and education to older adults and persons with disabilities to promote their access to CDA-administered programs?**

The Older Americans Act and the Older Californians Act charge CDA with a broad role in educating the public on aging, disability and caregiver issues and in helping individuals access needed services. The types of information consumers need can be very broad--ranging from employment, retirement, housing, and transportation questions to health care, supportive services, elder abuse, and assistive technology issues. The Department works collaboratively with many other state agencies and key senior and disability organizations in outreach and educational efforts.

Increasingly, older adults, adults with disabilities, and family caregivers are turning to the Internet as an information resource. We are in the process of revamping the CDA website to add to the amount of consumer-focused information available and are working hard to make these resources easy to find. That website is also being used as a resource for the AAAs, MSSP sites, and other program providers to find resources that they can use in their outreach and education, such as emergency preparedness and health promotion tip sheets. As we have materials translated into other languages, we post them so that this information is readily available to agencies serving non-English speaking families. California is a very diverse state and providing culturally competent aging and disability outreach is an important priority for the Department.

The OAA mandates Information and Assistance (I&A) programs as a priority service that must be available to older adults and family caregivers throughout the state. CDA monitors these programs and is strongly encouraging AAAs to take the steps necessary to ensure the I&A programs meet the Alliance of Information and Referral Systems (AIRS) standards and their I&A staff become AIRS certificated. Meeting these



standards and credentialing is an important strategy in improving the quality of this critical service. Local progress is occurring as more local I&A staff become certified and programs meet the AIRS standards. On monitoring visits, CDA visits the local I&A program to ensure that it has the capacity to respond to the community's diverse population, particularly underserved groups.

CDA also operates a toll free 800 telephone line that automatically routes callers from anywhere in the state to the AAA serving their county, so they can get information and assistance in obtaining services with just one call.

CDA sought and has implemented an Aging Disability Resource Center (ADRC) program with a federal Administration on Aging (AoA) demonstration grant funding. This grant program seeks to establish visible trusted community resources that can help older adults, persons with disabilities, and family caregivers learn about supportive services in their community, help them make informed choices, and assist them in accessing these services. Based on its initial experience in implementing the ADRC programs in Del Norte and San Diego Counties, CDA's ADRC program now intends to focus on a strong collaboration between the local AAA and the Independent Living Center (ILC) so that their combined resources and infrastructures provide even more comprehensive outreach and I&A to consumers in the community seeking to maintain their independence, and to consumers in nursing homes seeking to transition to a more independent setting. (See #6 for more details.)

**3. Does CDA have a process to determine (monitor) if programs operated through contracts with other entities, are accessible to older adults and persons with disabilities regardless of their race, ethnicity, and domestic partnership status?**

The OAA requires that AAAs, in developing their Area Plans and allocating their resources, give preference to older adults with the greatest economic and social needs, with particular attention to low-income minority individuals. The term "greatest social need" includes non-economic factors such as physical and mental disabilities, language barriers, and cultural, social or geographical isolation including that caused by racial or ethnic status.

Each local AAA must develop an Area Plan in accordance with OAA requirements and CDA program guidance every four years. That process requires the AAA to conduct a community needs assessment process that addresses "greatest economic and social needs." The draft plan must include public review and comment before it is submitted to CDA for review and approval. Each year CDA requires a Plan Update in which AAAs detail their progress in accomplishing their objectives or modifications that need to be made due to local changes. CDA takes its role in reviewing and approving these Plans quite seriously to be sure that the local economic and social needs are addressed and met.

Recently, CDA issued guidance to the AAAs on the Americans with Disabilities Act (ADA). While these requirements have been law for many years, CDA had not issued guidance pertaining to the impact of the ADA on OAA services. AAAs that are county-

based agencies are very familiar with these requirements, but some non-profit AAAs needed this additional guidance to ensure that the services they fund or provide directly are accessible to persons with disabilities.

CDA is also providing training and technical assistance to the AAAs to implement the provisions contained in AB 2920 (Leno, Chapter 829, Statutes of 2006) which calls for the Department to train AAAs about the unique needs of LGBT older adults, adults with disabilities, and family caregivers. The statute requires CDA to assure that OAA and OCA services are available to all older adults regardless of specific characteristics, including sexual orientation or gender identity and requires AAAs to include the needs of LGBT elders in their needs assessment process and Area Plan development process.

**4. What is the appropriate role for AAAs and other local partners of CDA in the coordination of home and community-based, long-term care services at the local level? How can CDA assist AAAs and communities to fulfill their role?**

As the federally designated State Unit on Aging, CDA is responsible for administering OAA and OCA programs that provide many HCBS to older adults and persons with disabilities to remain in their own home and community, to assist family caregivers in their efforts, and to help protect the quality of life for residents in residential care and nursing facilities. Both the OAA and the OCA provide the AAA with a substantial degree of autonomy in conducting their assessment of local needs and in allocating resources responsive to these needs. This is a rather unique local-state relationship in that the state does not prescribe what services will be provided. Its role is to ensure that federal and state requirements for these programs are met.

CDA assists the AAA network by:

- Working with other State departments and agencies and local entities to define/clarify roles and responsibilities at both the State and local levels. Many AAAs operate programs that interface with or are administered by other state departments. When issues arise, CDA proactively brings those departments into discussions with the AAAs to clarify requirements, promote greater service coordination to benefit clients, and streamline administrative processes wherever possible;
- Providing Area Plan development guidance that encourages and supports the expansion and quality of HCBS delivery systems;
- Developing common program standards including service unit definitions and reporting requirements;
- Fostering the development and implementation of common intake, screening and assessment instruments;
- Securing federal demonstration grants that provide new resources to develop and test innovative services in partnership with the AAAs;
- Helping to improve access to information, resources and services through technical assistance, public outreach, and advocacy;
- Providing training and technical assistance to individuals and organizations at the local level as needed;



- Acting as a clearinghouse of AAAs to sharing successful strategies for addressing issues, implementing programs, etc. with each other; and
- Refining data collection and reporting to improve the information available to decision makers in developing policies that affect older adults.

Several examples of coordination occurred during the recent fires in Southern California. The San Diego AAA told CDA about the difficulty of getting masks for seniors at-risk due to unhealthy air. CDA worked with the Office of Emergency Services, State Operations Center to inform them that masks were needed. Questions from the AAA soon arose as to whether OAA nutrition funding could be used for evacuees who did not qualify for this program. Quick coordination with our federal government partners yielded a positive response with guidelines to ensure reimbursement. I personally called each of the AAA Directors involved in the crisis to offer state help and to link them with out-of-state AAAs who had been through the Federal Emergency Management Agency (FEMA) process. The suggestions given by these out-of-state AAAs on streamlining the FEMA housing application processes and identifying nursing facility beds was invaluable to the AAAs.

## **5. How does CDA work with other state departments to coordinate the provision of long-term care services?**

Services provided by a number of state departments touch the lives of many adults who need long term supportive services, whether in their own home or community or in an institutional setting. IHSS and Adult Protective Services (APS) are administered by Department of Social Services (DSS). The Caregiver Resource Center Program is administered by the Department of Mental Health. The ILC network is overseen by DOR. The Department of Health Care Services (DHCS) is the single state Medicaid agency. DPH licenses all health care facilities, including adult day health care centers, home health care agencies, and nursing homes. DSS Community Care Licensing licenses adult day care centers and residential care facilities for the elderly. These are just a few of the state departments CDA works collaboratively with on an ongoing basis because the programs we operate intersect with the activities and functions of these departments and/or we share clients across these programs and need to coordinate closely for good client outcomes.

CDA has four key interagency agreements (IA) and/or memorandums of understanding (MOU) that establish our formal cooperative working relationships:

- Department of Health Care Services: MSSP waiver program and ADHC program (IAs)
- Department of Public Health: LTC Ombudsman program (MOU)
- Department of Social Services: LTC Ombudsman program (MOU)
- Department of Rehabilitation: in establishing a collaboration working relationship to support community living opportunities for older adults and persons with disabilities. (IA)

CDA has established Statewide Steering Committees for the federal demonstration grants that it is implementing (discussed in more detail under #6). DPH has program



experts that participate on two of those Steering Committees. DHCS Office of Long Term Care, DOR, and staff from CHHS serve on CDA's ADRC Steering Committee. CDA, in turn, also actively serves on their federal grant advisory committees.

CHHS has several committees that span across multiple departments. As Director, I attend all of the Olmstead Advisory Committee meetings and participate in pre-and post-internal meetings to discuss Olmstead activities. The Committee's goal is to promote increased opportunities for persons with disabilities to live independently and with dignity. By bringing state departments, interested groups and the public together to make recommendations to the Agency Secretary, problems are identified, solutions suggested and plans are implemented. Even though our progress is measured given the Budget realities during the past several years, California's institutionalized population based on a percentage of spending continues to decrease.

Other key inter-department efforts coordinated through CHHS that CDA participates on include: the Suicide Prevention Task Force; DSS Mass Shelter Workgroup and DSS Sheltering Elderly/Persons with Disability Workgroup; CHHS Disaster Coordination Council; and the Disability Action Plan Project Advisory Committee.

Over the past several years, CDA has forged a much stronger working relationship with DOR at the state level and many AAAs and ILCs have done the same at the local level. Joint state leadership conferences have brought both groups together to focus on areas of mutual concern. Common interest in how the needs of older adults and persons with disabilities will be addressed in a disaster has resulted in strong working relationships between both groups. California's ADRC program has also been a very positive opportunity to forge the concept of a community infrastructure that builds on and coordinates the strengths and resources of the AAAs and the ILCs.

CDA and DOR are both keenly aware of the need for supportive housing and transportation options for older adults and persons with disabilities. Tony Sauer, the new DOR Director, and I have already met with Lynn Jacobs at the Department of Housing and Community Development (HCD) to explore accessible housing issues.

CDA administers the OAA Family Caregiver Support program established by Congress in 2000. DMH administers the state funded Caregiver Resource Centers (CRCs). Recently, CDA hosted a meeting so that key staff from both departments could understand the similarities and differences of both of these programs and how this funding can be used in a complementary manner to help as many caregivers as possible. This is particularly important because many AAAs contract with CRCs to administer all or a portion of the Family Caregiver Support program. Follow-up meetings will be scheduled to continue this dialogue.

In the 2007-08 Budget, CDA received a mental health specialist position funded through the Mental Health Services Act (MHSA). This position will provide the Department with resources to focus on mental health issues for older adults, persons with disabilities and family caregivers in an ongoing manner. The statistics are clear: the group with the highest suicide rate is white men. Family caregivers, particularly those caring for persons with severe dementia and/or mental illness are at very high risk for clinical

depression and major health problems. This new position will allow CDA to be actively involved in the MHSA state level discussions and in working with the AAAs and our other program providers in promoting effective services to provide mental health education, screening and treatment to older adults and family caregivers.

Alcohol and drug abuse is also an important, but largely hidden risk for older adults. CDA staff is linking with their counterparts in ADP to strengthen the Aging Network's involvement in programs addressing alcohol and chemical dependence, as well as problem gambling among older adults.

**6. Please briefly describe CDA's California Aging and Disability Connection Program and the California Health and Human Services Agency's Community Choices Project and Community Transition Project, which are intended to increase consumer access to home and community-based, long-term care services. How are these projects designed to build and expand successful models of long-term care coordination?**

The federal Health and Human Services Agency has funded a series of competitive grants to states to help them restructure their programs and services to assist seniors and persons with disabilities to increasingly live in the most independent and integrated settings possible. These grants include funding for the following:

Aging and Disability Resource Center

In 2004, CDA received a three year ADRC grant from the Center for Medicare and Medicaid and AoA to develop community resources that would be known and trusted by the public, that would provide information and assistance on home and community supportive services, and help in making informed choices and applying for these services. CDA funded ADRCs in two areas, Del Norte and San Diego Counties, providing an opportunity to identify strategies that could work in rural and urban, multicultural areas of the state. During that initial grant, the San Diego AAA and the ILC formed a strong working relationship to address the grant goals and to share resources in addressing the ILC's nursing home deinstitutionalization project. The partnership between the AAAs and ILCs brings together the infrastructure of the OAA funded services with the independent living philosophy and assistive technology expertise of the ILCs to better serve all clients in need. CDA just received a one year \$200,000 AoA ADRC expansion grant and will be soliciting two additional regional ADRCs. In the future, CDA ADRCs will also specifically include nursing home transition efforts and involve the local LTC Ombudsman in ADRC efforts to identify nursing home residents who want to and may need assistance in transitioning to a more independent living setting.

California Community Choices Grant

The California Community Choices (Choices) grant is a five year \$3 million grant funded by the Centers for Medicare and Medicaid (CMS) that is being implemented by CHHS. California's grant is focused on increasing consumer access to long-term care services and supports in diverting older adults and persons with disabilities from unnecessary institutionalization through increased development of the state's long-term care infrastructure. The Choices grant includes funding a long term care financing study to



examine laws, regulations, policies and payment methodologies related to long-term care payments. It will also fund the implementation and testing of the redesigned CalCareNetwork website, a tool to help consumers and agencies that provide information and referral to be able to identify support services that are available in the local community, better understand eligibility requirements, and help empower individuals to make informed choices about their options. Under this grant two additional ADRCs will be selected that will perform the core functions described above under the CDA grant. However, the Choices ADRCs will focus more specifically on assisting consumers to successfully transition from hospital to home (rather than nursing home transitions) and will pilot test the redesigned CalCareNetwork website.

#### Community Transitions Grant

The California Community Transitions grant is a five year \$130 million grant funded by CMS that is being implemented by DHCS. Under this grant, DHCS will select and oversee local community transition teams that will assist individuals who have resided in health care institutions (including nursing homes) for six months or longer to transition into a more independent community setting. The grant plans to help transition up to 2,000 individuals in ten regions of the state over the five year timeframe.

#### Coordination Across these Grants is Essential

Each of these federal grants provides California with resources that can be used to enhance or expand the current HCBS long-term care infrastructure by developing closer working relationships between the AAAs and ILCs, new web tools to help inform consumers and service providers about HCBS resources, additional assistance in helping individuals transition out of hospitals or other institutions back into the community, and increased consumer outreach and education on HCBS long-term care options.

Effective use of these grant funds will require coordination across the existing HCBS programs and these new federal grants to ensure that the state is using these funds as effectively as possible and to avoid the potential of creating more silos and fragmentation in the service delivery system. Each of the entities administering these grant funds has steering committees and/or advisory committees to provide input in the development and implementation of these grants. All of the departments that administer programs that will be needed by consumers being served by these grants are participating on the various grant steering/advisory committees. For example, CDA hosts its own ADRC Steering Committee, which included DHCS, DOR, and CHHS, and it also serves on the Choices and Community Transitions grant Advisory Committees. There is strong commitment to coordination across all of these grants. Likewise several advisory committee members are on more than one grant advisory committee and are also members of the Olmstead Advisory Committee. Finally, CHHS has begun to convene a regular internal meeting for lead project directors for the above grants, as well as other key programs and grants to ensure information sharing and joint efforts are organized and not duplicated.

**7. What steps is CDA taking to address the highest priorities identified in the 2002 “Strategic Plan for an Aging Population” and the California State Plan on Aging, 2005-2009”?**

As noted earlier, California is home to more older adults than any other state and that number will more than double over the next several decades. "The Strategic Plan for an Aging Population" mandated by SB 910 (Chapter 948, Statutes of 1999) required CHHS to develop a statewide strategic plan on aging to address those growing needs from a long term planning perspective. The plan identified well over 500 policy and action items across 16 different topical areas including employment, transportation, housing, preventive health, higher education, long term care and caregiver supports. This plan articulated many key issues that will need to be addressed at the national, state and local level over the coming years. CDA works with stakeholders and other departments to implement the strategic plan objectives.

To receive federal OAA funds, CDA must submit a State Plan on Aging to the AoA every four years. In preparing the 2005-09 State Plan on Aging, CDA included not only its OAA funded programs, but also the Medi-Cal programs administered by the Department to encourage cross-program collaboration. Given the fiscal constraints facing the State, priorities developed were limited to those that could be realistically achieved within CDA's existing resources at the time. The plan identified seven key overarching areas with 33 specific objectives reflecting the Department's most critical priorities. These included:

- Ensuring access to services through effective consumer information and outreach. (See Question #2 for more details.)
- Promoting physical, mental and social well-being among older adults and their informal caregiver.
  - Preventive Health: CDA competed for, and was granted an AoA Evidence-based health promotion grant aimed at empowering older adults with chronic conditions to better manage their health. This program is being implemented in seven California counties currently and is serving both English and Spanish speaking older adults.
  - Mental Health: CDA has encouraged the participation of aging advocates, the AAAs and local service providers in the MHSA local planning processes. CDA also sought and received one full time position in the 2007-08 Budget for a mental health specialist within the Department to provide needed expertise both within CDA and in working with the AAAs and our Medi-Cal programs in developing effective and appropriate strategies to address the mental health needs of seniors. This position is funded through the MHSA.
  - Alzheimer's Caregiver Support: Families provide approximately 80 percent of long term care assistance. The toll that care takes on caregivers has been the subject of much research and those findings indicate that the physical and emotional burden of caring for someone with significant mental illness or dementia exacts the highest toll. Not surprisingly, having dementia is a key factor in nursing home placement. In 2007, CDA competed for and received two AoA demonstration grants focused on providing outreach, education and assistance in accessing services among two ethnic communities: Spanish speaking families throughout the state and Vietnamese families in Orange



County. This grant will be implemented in partnership with the Alzheimer's Association. Previous grants under this program have targeted other ethnic groups in various other parts of the state.

- Protecting quality of life and rights of elders through education, legal services, and improved coordination with law enforcement.
  - The LTC Ombudsman program is developing training materials on elder and dependent adult abuse investigation gathered from law enforcement agencies with exemplary training programs and distributing these materials statewide to local law enforcement agencies. This training will provide resources to assist local law enforcement agencies to better identify abuse and neglect and protect the rights and quality of life for residents who live in long-term care facilities.
  - CDA is piloting a uniform reporting system with some AAAs and legal service providers to measure the quality and quantity of legal services provided to low income seniors. In 2007, CDA applied for a competitive AoA federal demonstration grant to support further development of the state's senior legal services. Unfortunately, in spite of that effort, the Department did not receive that funding. The Senior Legal Hotline did receive \$250,000 in General Fund support to expand legal services. The goal of this seed funding is to build a statewide foundation for quick and effective legal advice.
- Strengthening the quality and accountability of CDA programs
  - OAA and OCA Programs CDA and the AAAs are evaluating the Older Americans Act monitoring process to improve quality and consistency. CDA strives to allow local flexibility as provided for in law yet also seeks to preserve some standardization throughout California. As part of the monitoring process, CDA provides technical assistance and recognizes and publicizes Best Practices. In addition to the monitoring process, CDA presents and trains at Association conferences. In some cases, AAAs request on-site visits by CDA for additional training or participate in small training sessions by conference call or at the Department. Recently, one AAA brought its entire staff to Sacramento for a comprehensive training and technical assistance session.

CDA is also developing a Technical Assistance Data Base. Not only will this enable the AAAs to quickly find information and advice, but it also will allow CDA to analyze and target problem areas needing system-wide attention.

CDA staff also personally visit programs to identify problems and successes. These onsite visits are critical for staff to continue to assess the real needs, head off potential systemic problems and improve quality throughout the state. In addition to visits, staff continually seek to learn and improve their own skills and knowledge to become more effective advisors and change agents.



- MSSP: Using the CMS HCBS Quality Matrix as a guide, the CDA MSSP program staff monitor local MSSP sites to assess their efforts to provide quality services in each of seven identified focus areas (Participant Access, Participant-Centered Service Planning and Delivery, Provider Capacity and Capabilities, Participant Safeguards, Participant Rights and Responsibilities, Participant Outcomes and Satisfaction, and System Performance). When deficiencies are found, CDA initiates steps to remediate the deficiency by providing technical assistance and regional or site-specific training.

Quality assurance and quality improvement is a process that involves continuous assessment of program performance and client satisfaction. CDA MSSP is engaged in ongoing quality assurance efforts including policy formation and dissemination, training, oversight and monitoring.

- ADHC: In CDA's shared ADHC program oversight role, we continually engage in efforts to improve consistency and quality in the certification and collaborative work we do with our partner agencies (DPH and DHCS). Ultimately, those efforts improve the quality of services delivered to frail seniors and adults with disabilities served by the ADHC program.

Ongoing quality improvement efforts include monthly meetings and conference calls with DPH Licensing and Certification to clarify program requirements and processes and to ensure consistent interpretation and enforcement. CDA also participates regularly in work groups, meetings, and training sessions, as well as in informal communications with multiple units in DHCS, including Medi-Cal Benefits, Utilization Management, Audits and Investigations, and Provider Enrollment. CDA's coordination with DHCS facilitates consistent understanding and implementation of ADHC program requirements.

CMS has threatened to withhold federal funding for the ADHC program if California does not restructure the program to meet federal requirements. CDA has played an instrumental role in crafting legislative reforms, included in Senate Bill 1755 (Chapter 691, Statutes of 2006), which was designed to address regulatory compliance problems and fraud, meet CMS demands, and improve overall program quality. CDA continues to play a significant role in Program reform as we work with DPH and DHCS, the California Association for Adult Day Services (CAADS) and the Legislature to implement reforms and develop further program improvement measures.

- Promoting volunteerism to expand services and provide opportunities to serve the public.

The services provided by the Aging Network heavily rely on the many dedicated volunteers who work in these programs. A strong volunteer base continues to support both the home-delivered and congregate meal programs. A 1991 CDA survey identified that almost 68,000 volunteers were actively involved in providing

much needed assistance in California's Aging Network. This equates to at least \$226 million in donated time annually.

Two of these programs—the Long Term Care Ombudsman and the Health Insurance Counseling and Advocacy Program (HICAP)—are truly volunteer programs supported and administered by paid staff. Three factors are of concern in being able to maintain and increase volunteerism in these programs: 1) Aging boomers are primarily interested in volunteering in youth programs, want to have a very flexible schedule, and plan to continue working longer; 2) HICAP volunteerism has become much more complicated since the introduction of the Medicare Prescription Drug Benefit; and 3) Dealing with elder abuse as a volunteer in the LTC Ombudsman program can also be emotionally very challenging. Both programs require significant volunteer training and certification. HICAP averaged over 35 volunteer hours per month in '05-'06 and the Ombudsman program generally averages 20 hours per month.

- With foundation support, CDA has conducted a survey of LTC Ombudsman to identify what factors are involved in successful volunteer recruitment and retention and what factors contribute to their leaving the program. This input has been helpful to help identify the best recruitment messages and strategies and what changes could be made to encourage volunteers to remain in the program longer. CDA's new ADRC grant will also encourage ILCs to help recruit additional Ombudsman volunteers.
  - The CDA HICAP office is encouraging local programs to consider the use of volunteer stipends. The need to coordinate the advertising for new volunteers in these two programs to occur just before mandatory training has also been identified as critical in recruitment efforts.
- Using existing and emerging technologies to improve service delivery, program management and accountability, and policy development.
- CDA is in the process of implementing a web-based data reporting system for its OAA programs. To date, the contractor for this reporting system has been selected and the detailed specifications for the system are being developed. AAAs use a variety of different applications to submit required federal data to CDA. The Department is and will continue to work with the local AAAs as they transition to this new reporting system.
  - CDA is developing an internal technical assistance database to identify policy and programmatic issues that the AAAs are raising and to document issues that are being found during monitoring visits. Analysis of information in this database will allow CDA to respond consistently, identify training needs, and prioritize issues requiring the greatest attention.
- Improving CDA business practices to support policy and programmatic goals.



- Both CDA program monitoring and fiscal audits of the 33 AAAs are being completed on time and reports are issued within the required timeframes. Backlogs have been eliminated and written procedures are in place to ensure that AAAs are promptly notified in writing of their deficiencies and that appropriate follow-up and corrective action occurs. Additional efficiency has been achieved through increased coordination between the Department's Monitoring and Audit teams and elimination of several areas of duplication between the two reviews.
- The contract process for MSSP has been streamlined by posting some standard contract terms and conditions exhibits on the Department of General Services (DGS) website. Once these exhibits are reviewed and approved by DGS Legal, they are incorporated into the contracts by reference. CDA contractors can then access the official exhibits electronically. This significantly reduces the amount of copying time and the bulk that has to be mailed to 41 different MSSP sites.
- The Department has completed phase I of its ADHC database project. The database tracks ADHC center information and the results of field surveys performed by the ADHC program staff. The database ensures consistency in certification reviews, improves efficiency of staff in writing up and issuing survey reports and following up on corrective action plans.
- CDA is also nearing completion of its new Ombudsman database to track certified representatives throughout the state and the status of their background clearances. Background clearance is a new prerequisite for certification, and the database will help track the status of certification and the results of the clearance process.

**9. How can CDA work with its state and local partners to address the needs of older adults that are outside of CDA's programmatic and funding authority? For example, how can CDA work with other entities to address the priority of increasing affordable and supportive housing options and promoting transportation alternatives for older adults?**

CDA seeks to build relationships with its state and local partners and use those relationships to address the needs of older adults. AAAs always tell us the greatest need in their communities are for senior housing and alternative transportation. As a first step to addressing housing, CDA is working with DOR on identifying immediate, achievable steps to increase housing options. CDA and DOR have met with HCD to discuss options. CDA is also pleased with the Governor's signature of AB 927 (Chapter 618, Statutes of 2007) which was sponsored by the California Commission on Aging to increase the affordable housing supply for older adults.

CDA has highlighted as a best practice some model transportation programs in Orange and Riverside Counties. Orange County funds a \$2/per trip program which takes seniors to and from medical appointments. Riverside has structured an IHSS-type program. Seniors find and hire their own drivers, and then the AAA provides the senior

money to pay the driver. The beauty of this program is that staff is not needed to find drivers and match them with seniors. CDA is now investigating what federal and other funding could support and expand these model programs.

On a broader scale, CDA is also working with the California Council on Gerontology and Geriatrics to increase the aging expertise in city and county government agencies that administer programs serving older adults and persons with disabilities. Given the demographic changes underway, students in all professional areas need a core understanding of aging issues as they relate to whatever their area of specialized study may be.

Land planning influences housing supply and transportation. Without aging expertise, local governments will continue to miss important opportunities to proactively plan for an aging population. Solving housing and transportation needs start at the local level and cannot be achieved without local involvement and support. Much more education needs to be done with the California League of Cities and California State Association of Counties to prepare for the aging population. The best result would be for cities and counties to use their General Plan as a vehicle for addressing the impacts of "the silver tsunami" in all areas under their control.

**10. Specifically, what are the new requirements of states for data collection and reporting of OAA programs? When will these requirements go into effect? What are the challenges California faces to meet these requirements?**

The new OAA data reporting requirements for Title V, Senior Community Service Employment Program (SCSEP) are now in place. CDA has been actively working with local sites to implement the new database requirements. The data is collected locally and submitted directly to the Department of Labor (DOL) via SPARQ (SCSEP Performance Results Quarterly Progress Report). SPARQ is a web-based data collection system.

As a result of the 2006 Amendments to the OAA, SCSEP has implemented the common measures and two additional core measures. I have listed below both the core and additional indicators of performance.

**Core indicators**

- Common Measure Entered Employment
- Common Measure 6-Month Retention
- Common Measure Average Earnings
- Community Service (Number of hours a participant spends in a Community Service Training Assignment)
- Service Level – (The number of older individuals served during the program year)

**Additional Indicators**

- Common Measure – 1 year Retention

DOL has contracted with Mathematica and the Charter Oak Group to make the necessary update to SPARQ and the SCSEP Data Collection Handbook. CDA is responsible for disseminating the information and providing additional technical assistance when needed.

**11. Beyond data reporting, what are the other main implications for California from the changes made under the 2006 OAA reauthorization? What steps is CDA taking in response to these changes?**

The main policy changes made under the 2006 Older Americans Act reauthorization were expanding ADRCs and evidence-based programs; addressing mental health needs; planning for disasters, including limited English proficient seniors as a preferential category; and coordinating state transportation systems for older adults. CDA is already addressing many of the new changes to the OAA.

CDA has secured federal grants to implement and expand ADRCs and evidence based programs. See # 1 and # 6 above.

As a result of MHSA funding, CDA now has a position dedicated to mental health issues. Guidance to the AAAs will be developed in 2008. Several AAAs have or are implementing promising programs, such as a home-delivered meal program where drivers conduct a depression screening that is reviewed for follow-up services to at-risk seniors. Practices such as this will be promoted.

Last year, CDA requested that the AAAs begin to plan for disasters. All but five of the AAAs included a Disaster Plan in their most recent Area Plan Update. CDA is working on guidance to all AAAs with instructions for the minimum requirements for a Disaster Plan. In many areas of the State, AAAs are forming strong working relationships with their emergency services agencies.

CDA has always included limited English proficient seniors in its monitoring of AAAs. When the Area Plan is drafted and updated, the needs of these seniors are addressed.

Transportation remains a critical area for all AAAs. Two AAAs have model programs which could be replicated with some funding locally. See Question #9 above. Rural counties are developing a coordination system which allows a senior to call for a ride and then matches that senior to one of the local providers. More work needs to be done on coordination of services across the state.

**12. What proportion of management and other staff of CDA are expected to retire in the next five years? What is CDA doing regarding succession planning to fill vacancies due to expected retirements?**



In January 2007, we surveyed all of our staff in order to determine how many plan on retiring in the next five years. Based on this survey, 48% of our manager/supervisors and 23% of our other staff plan to retire within five years.

CDA is fortunate that CHHS has proactively taken steps to address vacancies due to retirements. CHHS and all its departments shared the costs of a combined exam for the classification of Staff Services Manager I. Over 3000 prospective employees statewide took the test. Recruiting from outside state government will significantly expand our ability to hire quality employees. CHHS also has developed a new Supervisors Academy in conjunction with CSUS for employees to gain the skills necessary to perform in managerial positions. Three of CDA's employees are participating in this Academy. CDA has also participated in CHHS efforts to develop a Leadership Academy focused on training high level executive staff within the CHHS departments. One CDA manager is participating in the first Academy.

CDA's HR Branch has formed a work group to brainstorm how to recruit and retain employees. CDA conducts open exams for the Aging Programs Analyst II and Public Health Nutrition Consultant II classifications on a continuous basis to ensure a list is always available. Because CDA is a small department, advancement opportunities can be limited. This results in increased staff turnover resulting in an even greater need to recruit and retrain. Some of the proactive steps CDA has already taken include:

- Attending job fairs
- Designing brochures to highlight the benefits of working for CDA
- Creating job opportunity bulletins that are imaginative and entice candidates to apply for our positions
- Simplifying our application process so candidates can submit applications via e-mail
- Encouraging hiring from the open Staff Services Analyst and Office Technician lists for more "grow our own" opportunities.

CDA also encourages current staff to expand their skills and expertise by challenging them with opportunities for growth. Managers take the time to develop critical thinking skills. Last year all staff participated in a writing training program called VanWrite. Other trainings include:

- Personal Computer software training
- Facilitation training
- Attendance at conferences and seminars related to the Aging Network
- Leadership seminars

## RESPONSE TO CALIFORNIA SENATE RULES COMMITTEE QUESTIONS

Prepared by: Lloyd T. Bradshaw

Board of Forestry Member

January 2008

### Statement of Goals:

- 1) What are your goals as a member of the BOF? What do you hope to accomplish during your term? How will you measure your success?
  - A) My goal is to provide clear policy direction and adopt regulation that will better protect the natural resources of the State of California while providing for private forest products related businesses that constitute the needed infrastructure to accomplish desired results.
  - B) I have a one term (4 year) plan that is focused on:
    - i. Reducing the threat and intensity of wildfires in California.
    - ii. Facilitating and encouraging the active management of forestlands for a variety of uses and amenities, including timber production, watershed protection, and enhancement of wildlife habitat and aesthetic quality.
    - iii. Harmonizing the efforts of the various departments charged with protecting natural resources.
    - iv. Expanding educational awareness of the opportunities associated with the vast natural resources of the State.
  - C) Success will be measured by:
    - i. An expanded proactive program of fuel hazard reduction.
    - ii. The degree to which we can establish long term sustainable timber harvest levels, environmentally friendly mitigation measures, and commit to implementation of science based monitoring studies that provide the basis for development of performance based adaptive management strategies.
    - iii. The Board's ability to coordinate various natural resource regulations and expand the level of coordination between state departments.
    - iv. Updated text books available to young students that accurately display the current levels of protection, importance of active stewardship, and science based explanations of consequences from decisions and activities affecting California's natural resources.
- 2) .... As a member of the Board, whose interest do you represent? If the forest products industry's interests are at odds with the public's interest, what do you do?
  - A) Although I was appointed to fill a forest products industry slot, my decision making process will be guided by my strong resource stewardship ethic, and will take into account the many resource stakeholders beyond

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the private sector. My goal is to support a philosophy of conservation in Board actions that will provide better management of natural resources for the people of California. My positive experience in promoting sustainable and responsible land stewardship activities in my role as Resource Manager for Hearst Forests is a testament to this philosophy.

- B) My goal in every decision making process is to make informed, consensus-based policy decisions that reflect the best available science and give consideration to all impacted parties.
- 3) Your Board has few staff and depends on Cal-Fire for its information. What staff is available to assist you with your often-complex issues? Do you believe you can exercise independent judgment when setting policy given this situation?
- A) Our staff and budget are very limited so we utilize whatever resources are available to address the complex issues. Our current strategy is to fully discuss issues within committees that allow input by the public and other interested parties. If more detailed information is needed we utilize sub-committees or technical advisory committees to review the issues and provide recommendations. Consensus based committee recommended action items are presented to the full Board for complete Board review and discussion prior to taking action.
  - B) Yes, I believe we are successful in exercising independent judgment when setting policy given this situation and budgetary constraints. The diversity of interests represented on the Board and the multitude of various opinions presented by the public, special interest groups, and department staff during the open committee and full Board meetings allow for lively debates on all issues prior to Board members making independent judgment decisions.

#### **California Fire Plan:**

- 4) How often is the California Fire Plan reviewed by the Board?
- A) The Board's Resource Protection Committee review various Fire Plan related issues on a monthly basis and submits their committee minutes to the full Board for review and comment (though other committees may also be assigned specific fire related issues as needed). A complete review of the Fire Plan is undertaken periodically by the full Board.
- 5) What is the timeline for the board's review? Will the Board as a whole, review the plan, or will this review be assigned to one of the Board's committees?
- A) A complete review of the existing 1996 California Fire Plan is currently being conducted in the Resource Protection Committee. The Committee is making monthly progress reports to the full Board and it is anticipated that the full Board will review, provide comment, and approve a new California Fire Plan this year.



### **Southern California Fires:**

- 6) How is the Board involved in assessing the Department's response to the devastating Southern California fires of 2007? It has received a report but is any further action planned?
  - A) The Board is monitoring investigative findings, the Department's post wildfire review, and is updated monthly on progress and suggested recommendations for change.
  - B) Additional Board action will be based on findings that may serve to improve wildfire response in the future. Recognition and utilization of successful response efforts and providing for a flexible adaptive management approach to assess what worked and what can be improved upon will help build better response coordination on the next wildfire.

### **Fire Protection Regulations – Lake Tahoe:**

- 7) Please describe the board's efforts to work with the Tahoe Regional Planning Agency to reconcile the regulations.
  - A) The Board initiated discussions with the Tahoe Regional Planning Agency on this issue several years ago and has held periodic meetings in the Tahoe area to demonstrate our willingness to assist in addressing local concerns. In the aftermath of the recent fire, a Commission has been assembled to review the current regulatory program and recommend changes. The Department "Cal Fire" is represented on the Commission, Board staff is monitoring activities and communicating with the Department, and periodic progress reports are being made to the full Board. The Board stands ready to support the Governor's and Legislature's efforts and will respond to all suggested remedies developed by this effort.

### **Coho Salmon Protection:**

- 8) What types of additional protections are expected from the adoption of the Coho salmon incidental-take assistance regulations?
  - A) The board members have been advised that pending litigation on the regulatory package prohibits us from talking about specific issues here. That said, the Board is ready to move forward with implementation of elements within the Coho recovery plan as soon as the legal challenge is resolved.
- 9) What is your view of the challenges in adopting permanent regulations to protect Coho? Why are there still no permanent regulations in place after so many years?
  - A) Budgetary constraints to conduct the complex effectiveness monitoring and analyze results needed to assess the impact of the interim regulations.
  - B) The Board did adopt permanent regulations at the July 2007 meeting.



- 10) After a year and a half the board has yet to begin its scientific literature review. When will this review be complete and why is it taking so long? Why did the board believe it was necessary?
- A) If sufficient money is allocated for this project by Cal Fire, the literature review could be complete this spring. The complexity of the issue, budgetary constraints, and the amount of support from Cal Fire have all contributed to project delays.
  - B) The Board believes the literature review is necessary to base the adoption of permanent regulation on the best available scientific information.
- 11) Has your board discussed with the Department of Fish and Game what additional Coho protections would be necessary to justify the restoring of salmon recovery funds in the budget?
- A) I am not aware of any discussions with DF&G specific to additional Coho protections that attempt to justify the restoring of salmon recovery funds in the budget. The Board is working with the DF&G to develop a joint policy statement for all anadromous salmonids. The BOF has submitted a draft policy statement to DF&G who is still reviewing the document. Consistent with approval of the final joint policy statement, a restoration work action plan will be developed and implemented as funding is secured.
- 12) Should the Board develop timber harvest rules that protect all salmon species, or should the increased protections be provided for only Coho salmon? If only for Coho salmon, why?
- A) Due to the State and Federal listing of Coho under the Endangered Species Act, the short-term immediate focus was to work with the DF&G and expedite the development and implementation of a recovery strategy specific to Coho. Ecosystem management is a dynamic process. At any given time habitat requirements, warranted protection measures, and population status are different for the various individual fish species. If Coho specific habitat requirements are determined to be limiting and overlap with other anadromous salmonids habitat the levels of protective mitigation, if warranted, can be considered inclusive and providing for other species that utilize the same habitat.
  - B) Recognizing needs for other non-listed anadromous salmonids spawned the inter-department effort to develop a joint policy statement for all anadromous salmonids (mentioned above).

#### **Timber Harvest Reviews:**

- 13) How does the Board work with the Department of Forestry and Fire Protection, The Department of Fish and Game, and the regional water boards to resolve these conflicts?
- A) The Board sets policy direction and adopts regulations for Cal Fire to implement. Cal Fire has lead agency status for the adoption of harvest

plans and works closely with other trustee agencies (DF&G and water quality control boards) to insure that reasonable mitigation measures are incorporated into individual harvest plans addressing their concerns. The Board's open rule making process and Cal Fires' multi-agency individual harvest plan review process provide an open forum for these trustee agencies and interested public to participate and present their concerns. The goal of this process is to develop science based consensus driven mitigation that protects the various affected resources for each harvest area.

#### **Cumulative Impacts of Timber Harvesting:**

14) Should the issue of cumulative impacts be addressed by the Board? If so, how?

A) Yes, cumulative impacts from timber harvest activities should be continually monitored and, if warranted, adjustments made to reduce potential negative resource impacts. The Board supports various science based monitoring efforts conducted by Cal Fire, other trustee agencies, private industry, and the universities. California's forests are dynamic and developing proper mitigation to address cumulative impact issues is a science based adaptive process that strives to incorporate adequate protection levels based on documented results.

15) How do you believe the rate of harvest should be addressed by the Board?

A) The Board addresses the rate of harvest issue by implementation of harvest adjacency regulations, requiring a cumulative impact analysis for each harvest area, and larger landowners to develop sustained yield plans. In addition, implementation and effectiveness monitoring plans are required, if warranted, to study resource impacts from various harvest rates.

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January 24, 2008

Gary Nakamura's responses to the Senate Rules Committee's questions.

January 7, 2008

Garv M. Nakamura

Dear Mr. Nakamura:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of Board of Forestry and Fire Protection on Wednesday, February 6, 2008. We request that you appear. The meeting will begin at 1:30 p.m. in Room 113 of the State Capitol.

We have prepared the following questions to which we would appreciate your written responses. Please provide your responses by January 25, 2008.

We would also like to receive an updated Form 700, Statement of Economic Interest, by January 25<sup>th</sup>.

### **Statement of Goals**

1. *What are your goals as a member of the Board of Forestry and Fire Protection?*  
To assist the Board in the development of policies and programs that serve the public interest in environmentally, economically, and socially sustainable management of California's forest and woodlands. More specifically, to work for the seven sustainability goals and objectives set out in the Board's 2007 Strategic Plan, [http://www.fire.ca.gov/CDFBOFDB/PDFS/PolicyProgram\\_050107.pdf](http://www.fire.ca.gov/CDFBOFDB/PDFS/PolicyProgram_050107.pdf)

*What do you hope to accomplish during your term?*

In the coming decades, California's population will increase by 50%, placing greater pressures on its forests and natural resources to provide water, wildlife habitat, recreation opportunities, housing, open space and wood products, carbon sequestration and carbon-neutral biomass energy production. I will work with the Board to develop forest policies and programs that maintain working forest landscapes which produce the wide range of benefits and services we have come

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to expect from California's forests and woodlands. I will work to improve the process by which the Board considers scientific information and monitoring data in determining current and upcoming issues and problems and in assessing the effects of its rules and in developing new rules.

*How will you measure your success?*

By the measurement of actual environmental and social outcomes. e.g. for coho salmon it would be fish populations, habitats, stressors and improvements throughout entire watersheds. For private forests, it would be the consideration of the full suite of indicators of forest conditions and functions such as the metrics used in the Montreal Process, which the Board has structured its 2007 Strategic Plan upon. e.g. conservation of biological diversity, maintenance of productive capacity, forest health, soil conservation and water, forests and climate (carbon storage), socio-economic well-being, and governance. [www.mpci.org](http://www.mpci.org)

2. *The Board of Forestry has five public members, three members in "forest products industry" slots, and one member in a "range livestock industry" slot. As a member of the board, whose interests do you represent? If the forest products industry's interests are at odds with the public's interests, what do you do?*

I have one of the 'public member' slots. The slots are distributed to represent various types of technical expertise as well as draw public members from various backgrounds in our diverse state. My responsibility as a public member is to represent the public interests of all 36 million Californians and to maintain a fair allocation of costs and benefits. In the long term, I do not believe there is one, single "public" or "public interest" to be contrasted with "the forest products industry's interest". Groups that come before the board may start out from historic positions, but the responsibility of the board is to work for the long term interests of our growing state.

3. *Your board has few staff and depends on the Department of Forestry (CAL-Fire) for its information. What staff is available to assist you with your often-complex issues? Do you believe you can exercise independent judgment when setting policy given this situation?*

As issues and their solutions become more complex, there is no question that more staff analysis from both CalFire and its sister agencies will be required. Thus, it is important to make the best use of existing published and professional scientific information. The Technical Advisory Committee (TAC) to review the scientific literature pertinent to riparian functions and salmonid habitat conditions is an example of how the Board can gather such information.

I have a long professional career in forestry and natural resources and thus bring substantial personal experience and knowledge to forestry issues in California. I

am the co-director of the UC Center for Forestry at Berkeley which operates a number of research forests like Blodgett Forest Research Station where research is underway on sustainable forest management practices as well as on various topics of pure forest ecology. I am a member of the Society of American Foresters and California Licensed Foresters Assn. And in my position as Extension Forester, I work with family forest landowners from throughout the state, the Forest Landowners of California, California Tree Farm System, resource conservation districts, and fire safe councils. In short, I have many sources of information to assist me in the development of policy, understanding the costs and benefits of policies.

### **California Fire Plan**

The Board of Forestry and Fire Protection is responsible for developing both policy and regulations for the forestlands and fire protection system of the state. The California Fire Plan is the state's road map for reducing the risk of wildfire. The plan emphasizes what needs to be done before a fire starts. The plan looks to reduce fire-fighting costs and property losses, increase firefighter safety, and to contribute to ecosystem health. The current plan was finalized in March 1996.

In an October 24, 2007, letter to the governor, the board said it would begin a critical in-depth review of the California Fire Plan.

4. *How often is the California Fire Plan reviewed by the board?*  
I believe every 10 years the Fire Plan is comprehensively reviewed and reaffirmed or rewritten.
5. *What is the timeline for the board's review? Will the board, as a whole, review the plan, or will this review be assigned to one of the board's committees?*

The Board's Resource Protection Committee (RPC) will submit final conclusions of the 1996 Fire Plan Review to the full Board in March 2008. The RPC will outline recommendations for a Fire Plan update, form a stakeholder group to help formulate the Fire Plan update, and develop a final outline for updating the Fire Plan for consideration by the full Board in September 2008. Board expected to adopt and publish a Fire Plan Update in October 2009.

### **Southern California Fires**

6. *How is the board involved in assessing the department's response to the devastating Southern California fires of 2007? It has received a report but is any further action planned?*

I am not aware of any direct Board involvement in assessing CalFire's response to the Southern California fires of 2007. The Board's fire response assessment tool is the Fire Plan review currently underway.

In my day (and often weekend) job as UC Extension Forester, I have been involved in WUI homeowner and forest landowner education projects in California, both prior to and since the 2003 Southern California wildfires. I have been invited to participate in a Community Wildfire Protection Planning workshop in Idyllwild, Riverside county, on February 7, 2008. Time and financial limitations will probably preclude my direct participation. I bring these experiences and knowledge of Southern California citizens, WUI homeowners, agencies, and interest groups to Board discussions and decisions regarding wildfire and resource protection.

### **Fire Protection Regulations—Lake Tahoe**

In June 2007 over 200 homes burned in the Angora fire in South Lake Tahoe. Many residents have complained that they were unable to gain the necessary permits from the Tahoe Regional Planning Agency to remove trees around their home to provide a defensible fire space.

While the Board of Forestry and Fire Protection is charged with administering the Forest Practices Act, one section of the act, Public Resources Code Section 4516, gives the Tahoe Regional Planning Agency the authority to enact more stringent regulations than the Board of Forestry. There are in essence two sets of regulations, and in the Lake Tahoe area the Tahoe Regional Planning Agency's regulations take precedence. The Board of Forestry has been working with the Tahoe Regional Planning Agency to reconcile their regulations as much as possible.

7. *Please describe the board's efforts to work with the Tahoe Regional Planning Agency to reconcile the regulations.*

The Board and TRPA are interested in both reducing wildfire hazard with fuel treatments and protecting the environment from wildfire and minimizing the adverse effects of fuels treatments. Board Executive Officer Gentry participates in the California-Nevada Tahoe Basin Fire Commission and reports periodically to the Board. The problem is how to best manage the vegetation in sensitive areas of the Tahoe Basin, to reduce fuels and fire risk while still maintaining soil cover and protection from soil erosion.

On February 20 - 22, 2008, there will be a workshop on Vegetation Management in Sensitive Areas of the Lake Tahoe Basin: A Workshop to Evaluate Risks and Advance Existing Strategies and Practices. I would expect one of the outcomes of this workshop will be recommendations for reducing fire risk while protecting watershed and habitat



values. I think it is clear that we do not want outcomes where ecologically sensitive fuels reduction activities do not move beyond the planning stage. Reductions in fire risk need to occur. That will require collaboration among a variety of government entities and the landowners themselves.

### **Coho Salmon Protection**

Coho salmon from San Francisco to the Oregon border have experienced a significant decline in the past 40 to 50 years. According to a study done for the National Marine Fisheries Service, wild populations of coho salmon today are less than 1 percent of what they were in the 1940s.

In 1994 the Department of Fish and Game petitioned the Board of Forestry and Fire Protection to list coho salmon as a sensitive species. The board declined. In 1996 the state Fish and Game Commission listed coho salmon as endangered. Then in 1997 the federal National Marine Fisheries Service listed coho salmon as threatened.

The timber industry is interested in the state's coho salmon listing because, under current statutes, if a timber operation might kill coho salmon, the timber company must first obtain an incidental take permit from the Department of Fish and Game.

In 2000 the board amended the Forest Practice Rules to include Protection for Threatened and Impaired Watersheds regulations to enhance protection of listed salmon species. These regulations were adopted in 2000 because a state Scientific Review Panel concluded that the Forest Practice Rules did not sufficiently protect salmon. The Threatened and Impaired Watershed rules were to be a first step in increasing salmon protections. That is the only step that has been taken to date. These regulations were temporary and were extended in 2003, 2004, 2006, and 2007. They will expire December 31, 2008. In July 2006 the Resources secretary called on the board and the Department of Fish and Game to develop a set of comprehensive rules to protect and restore all salmon populations. Since 2006 the discussions at the board have moved from protection of all salmon populations to discussion on rules to cover only those streams where coho salmon are currently present.

Earlier this year the board adopted coho salmon incidental-take assistance regulations. These regulations would apply additional protections where coho salmon are present, and the Department of Fish and Game determines that coho will likely be taken by logging actions. The Department of Fish and Game provided the board with another rule package that would have extended protections for coho salmon in their total range, but the board declined to adopt that package. Despite the opinion of state and federal fisheries biologists that Forest Practice Rules did not adequately protect salmon, the board continues with its own scientific literature review to see if additional protections are needed for salmon. In July the board issued a request for proposal to carry out the literature review. In August the two bids received were rejected, and a new request for



proposal is expected to be issued by the end of this year. The literature review was initiated one and a half years ago by the board to determine if changes were necessary to the Threatened and Impaired Watersheds regulations.

During the recent hearings on the 2007-08 budget, the Senate Budget and Fiscal Review Subcommittee No. 2 removed \$10.9 million in salmon recovery funds from Proposition 84 because, in large part, they felt that the board had not adopted sufficient coho salmon protection rules. The final budget did not contain the \$10.9 million in salmon recovery funds.

8. *What types of additional protections are expected from the adoption of the coho salmon incidental-take assistance regulations?*

I take a watershed, landscape scale view of the salmonid protection and restoration issue. Everything that occurs in coho watersheds can affect coho habitat and populations – from wildfire in wilderness high in the watershed, to forest practices in the mid-watershed, to stormwater management in urban areas. It is important to measure the effectiveness of conservation and restoration activities and regulations, at the stand as well as the watershed scale. Stream flow, water quantity and timing, is important and reductions can come from new irrigation diversions or residential demands. So, restoration of the coho requires a comprehensive and broad effort across all land owners and uses in a watershed.

9. *What is your view of the challenges in adopting permanent regulations to protect coho? Why are there still no permanent regulations in place after so many years?*

The 2001 Cumulative Watershed Effects report prepared by The University of California Committee on Cumulative Watershed Effects, "the Dunne Report", provides recommendations for whole-watershed assessments of how land use alters risk of damage to ecosystem values. Regulation of timber harvest through the THP process alone will not restore coho. Forest management, rural driveways, pasture management, road projects, restoration projects, and large storm events will all interact to affect coho salmon. We need to manage for all of these planned and unplanned events.

10. *After a year and a half the board has yet to begin its scientific literature review. When will this review be complete and why is it taking so long? Why did the board believe it was necessary?*
11. *Has your board discussed with the Department of Fish and Game what additional coho protections would be necessary to justify the restoring of salmon recovery funds in the budget?*

The restoration of coho and other salmonid populations will require more than just BOF regulation of timber harvest through THP process. A more comprehensive, watershed

wide, all land use effort will be required to create and maintain sustainable watershed function and salmonid habitat. The Oregon Plan for Salmon and Watersheds offers an example of what would be needed <http://www.oregon-plan.org/OPSW/>. The Oregon Plan supports voluntary restoration actions by private landowners, coordinated state and federal agency support of this, monitoring watershed conditions and salmon recovery, and strong scientific oversight by an independent panel of scientists who evaluate the Plan's effectiveness, identify needed changes, and guide research investments.

12. *Should the board develop timber harvest rules that protect all salmon species, or should the increased protections be provided for only coho salmon? If only for coho salmon, why?*

See 11. regarding the need for a more comprehensive, watershed scale, multiple stakeholder (not just the Board and timber harvesters) effort to restore populations of currently endangered species like coho, and forestall further listings.

### **Timber Harvest Reviews**

The Department of Forestry and Fire Protection is the lead agency for timber harvest reviews and is responsible for ensuring the sustainable production of timber. However, two of the other trustee agencies—the Department of Fish and Game and the regional water quality control boards—have statutory mandates that on occasion are more protective of resources and more restrictive of logging activities. Historically, this has created a conflict between the agencies, with the Department of Forestry and Fire Protection often resistant to incorporating the changes requested by the Department of Fish and Game or regional water quality control boards.

13. *How does the board work with the Department of Forestry and Fire Protection, the Department of Fish and Game, and the regional water boards to resolve these conflicts?*

The Board's role in resolving conflicts among agencies is to focus them on shared goals of salmonid population recovery, improving water quality and watershed function, maintaining a regulatory framework supportive of a viable forest products industry. CalFire, Fish and Game, and the water boards probably interact most over the salmonid issue, so again I would refer to the Oregon Plan as something the Board should consider initiating. In the long run, having a comprehensive salmon and watershed restoration plan would obviate the inter-agency squabbles or at least give the arguments over particular timber harvests a common set of goals and objectives, standards for characterizing the differences and deciding how to resolve them.

## **Cumulative Impacts of Timber Harvesting**

Over the last several years, governmental and scientific reports have pointed out that the timber harvest rules do not adequately address the cumulative impacts of harvesting timber. These studies indicate that (1) the decision whether to allow timber harvesting in a given watershed is made with inadequate scientific assessments, and (2) timber harvesting is not analyzed in terms of the potential continuing effects of prior timber harvesting.

*14. Should the issue of cumulative impacts be addressed by the board? If so, how?*

Yes. The June 2001 Dunne Report, *A Scientific Basis for the Prediction of Cumulative Watershed Effects* would be a good place to start.

*15. How do you believe the rate of harvest should be addressed by the board?*

Rate of harvest is less informative and useful in assessing cumulative impacts than knowledge of actual watershed and instream water conditions, and risk assessment of further land use changes whether they be timber harvest, road construction and maintenance, housing development, agriculture or ranching. Rate of harvest is also an imprecise and ineffective tool for controlling cumulative impacts because it is about timber volume on a truck rather than dirt that may enter a stream. It is also not geographically explicit in terms of how the harvest is relate to streams. Finlly, the effect of a specific harvest will depend upon site specific conditions, assumptions about weather, how the harvest is conducted.

The Dunne Report should provide a starting point for addressing the cumulative effects issue. It proposes a risk-based modeling approach to assess cumulative impacts, since the threshold between impact and no-impact is not always discrete or measurable. It further cites new modeling techniques which can be employed to achieve a better understanding of natural processes at large geographic and longer time scales. It avoids the problems inherent in treating natural processes on a case-by-case basis. And we should demonstrate how this process might be used at the Jackson Demonstration State Forest and other research forest.

"The model-based assessments of risk would then be used by CDF or other agencies in formulating policies for watershed management, considering rates of cutting, locations requiring specific technologies, and the management of risks to particular ecosystem components and functions. The process would involve: multi-stakeholder accord on conceptual models of the target watershed values; agreement about what models need to be implemented and for what purpose; and concurrence on the necessary and appropriate data and predictions for the purpose of decision-making. We also describe how these watershed-scale CWEs could be linked to ongoing efforts in regional-scale assessments, Timber Harvest Plan applications, monitoring, and research. (put in the



Gary M. Nakamura  
January 7, 2008  
Page 9

page number for the quote) " To me, this sounds very much like process used to develop and implement the Oregon Plan for Salmon and Watersheds. I think it is very worthwhile to look closely at a nearby living example for lessons and inspiration.

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

DON PERATA

DP:KW

cc: Board of Forestry and Fire Protection





## Memorandum

**To:** Nettie Sabelhaus, Appointments Director  
Senate Rules Committee, Room 420  
State Capitol  
Sacramento, CA 95814

**Date:** January 24, 2008

**Copies:**

**From:** Doug Piirto, Professor and Department Head (RPF 2179)  
Natural Resources Management Department

**Subject:** Doug Piirto Responses to Senate Rules Committee Questions

Per the request of the Senate Rules Committee, I have prepared the following response to the 15 questions listed in the January 7, 2008 letter. I also send along my Curriculum Vitae to provide information on my experience and achievements to date.

1. *What are your goals as a member of the Board of Forestry and Fire Protection? What do you hope to accomplish during your term? How will you measure your success?*

**Answer:**

I would like to be a member of the California Board of Forestry and Fire Protection (BOF) to:

- Facilitate discussion leading to supported negotiation and good decisions regarding management of California's forest and wildland areas.
- Serve as chair of the BOF Forest Management committee leading discussion and formulating recommendations to the BOF on such matters pertaining to PTEIRs, SYPs, management of state forests, climate change and the role of forests/forestry, forest management measures in relation to water quality, streamcourse/riparian area protection, habitat management, protection of archaeological and historic sites, threatened and endangered species.
- Provide timely, responsive information to foresters, natural resource managers, land owners, and the public to better understand current rules and regulations
- Build trust
- Improve my knowledge of current and emerging forestry/natural resources science, technology and issues associated with management of California's private and state owned forestlands so that I can enhance my effectiveness as a member of the BOF. This improved knowledge will also serve me well as a professor and department head at Cal Poly.
- Serve as a conduit for information exchange and networking with the BOF
- And much more...

Success can be measured by the number of effective decisions the BOF has made during my tenure on the board.

Senate Rules Committee

JAN 25

Appointments

2. *The Board of Forestry has five public members, three members in "forest products industry" slots, and one member in a "range livestock industry" slot. As a member of the board, whose interests do you represent? If the forest products industry's interests are at odds with the public's interests, what do you do?*

**Answer:**

I am being asked to represent the public at large with my appointment to the BOF. I was appointed because of my significant education and experience as a forester/natural resource manager, applied forest scientist, and professor. I am enclosing my Curriculum vitae to document this educational and experience background in forestry and natural resources management. I am a licensed forester (RPF #2179), a Society of American Foresters Certified Forester, and certified silviculturist. I am currently a professor of forestry and natural resources and NRM Department Head at California Polytechnic State university. I have and will continue to draw on this experience, scientific knowledge, and understanding of the issues to facilitate discussion as "we" work to find effective decisions on management of California's wildland and urban forested areas consistent with statutory direction.

3. *Your board has few staff and depends on the Department of Forestry (CAL-Fire) for its information. What staff is available to assist you with your often-complex issues? Do you believe you can exercise independent judgment when setting policy given this situation?*

**Answer:**

Speaking personally, I am well connected with members of the science, industry, agency, and concerned citizen groups (e.g., NGOs). As appropriate, I have and will seek out information and advice from this network. For example, I presently work with one of California's leading watershed scientists Dr. Brian Dietterick. I have often consulted with Dr. Dietterick and others regarding various water quality issues. I would do the same for all issues that come before the board so that I have a full understanding of current information and viewpoints. I will regularly consult with the current staff of the Board of Forestry and Fire Protection along with key agency officials from Cal Fire, California Department of Fish and Game, Air Resources Board, State Parks, and other key state and federal agency officials.

Information is provided to the Board of Forestry and Fire Protection members via several current sources:

- BOF Staff. The BOF currently has the following staff positions: Executive Director, Staff Services Analyst, Executive Assistant, Executive Officer for Professional Foresters Registration, Office Technician, and Regulation Coordinator.
- BOF Standing Committees: Forest Management, Forest Policy, Resource Protection, Forest Practices. This committee structure allows professional groups (e.g., CLFA), NGOs (e.g., Sierra Club), practitioners (e.g., licensed

foresters, licensed engineers, biologists, geologists etc.), agency officials and other citizens to participate in the discussion on key matters before the BOF.

- Noticed public workshops provide a vehicle for the BOF to collect timely information on key matters from agencies and the public
- Scientific conferences, proceedings, journal articles, and technical reports provide timely information as well.

Whereas this information exchange has enabled the BOF to function reasonably well, I see continued challenges for which additional staff could assist. Current BOF policy requires that new rules only be established once per year and published in January. This time constraint put a significant burden on the BOF staff. The BOF has recently recognized that it must prioritize work to insure responsiveness to all that is required to put rules and regulations into effect. Further, issues such as climate change, threatened and impaired watersheds, water quality, fire events, anadromous fisheries, threatened and endangered species, and so forth require a lot of staff time. It is imperative that we find a budget mechanism to increase the number of BOF staff given these many issues and competing demands for staff time.

## California Fire Plan

The Board of Forestry and Fire Protection is responsible for developing both policy and regulations for the forestlands and fire protection system of the state. The California Fire Plan is the state's road map for reducing the risk of wildfire. The plan emphasizes what needs to be done before a fire starts. The plan looks to reduce fire-fighting costs and property losses, increase firefighter safety, and to contribute to ecosystem health. The current plan was finalized in March 1996.

In an October 24, 2007, letter to the governor, the board said it would begin a critical in-depth review of the California Fire Plan.

### 4. *How often is the California Fire Plan reviewed by the board?*

**Answer:** Periodic updates by the Cal Fire Director and designated agency officials are presented to the Board of Forestry and Fire Protection at the: 1.) monthly full BOF meetings and 2.) monthly meetings of the BOF Resource Protection Committee (RPC).

### 5. *What is the timeline for the board's review? Will the board, as a whole, review the plan, or will this review be assigned to one of the board's committees?*

**Answer:** The California Fire Plan receives a formal review by the Department and BOF every 10 years. The current 1996 plan is now undergoing a formal 10 year review by the BOF by Department, BOF Resource Protection committee and the full BOF. Work accomplished to date includes:

- The BOF Resource Protection Committee which includes four board members has largely completed its assessment of the 1996 fire plan. Input and discussion with board members, agency officials and the public has and is continuing to occur at monthly BOF meetings.



- A formal review of the 1996 fire plan by was conducted by Cal Fire personnel and an expert panel in 2005.
- The findings of this assessment and review process are summarized in documents that have been available for public review since the end of 2006.

The strategic framework for the for the forthcoming 2008 California Fire Plan is focused on reducing total costs and losses resulting from wildfires giving consideration to defensible space, ignition resistant buildings, and suppression services. Currently the BOF Resource Protection Committee in consultation with Cal Fire department officials is developing a set of strategies and actions that will serve as a basis for the 2008 fire plan. These proposed strategies and actions are currently comprised of four key elements: fire planning and prevention (pre fire management), fire protection organization and operations (level of service), financial management, and firefighter/public safety. Additionally, a Benchmark of Achievements is being proposed for the 2008 California Fire Plan that will support a continuous improvement cycle (i.e., plan, act, measure, adapt). Full discussion and public review has and will continue to occur per BOF procedures.

### **Southern California Fires**

6. *How is the board involved in assessing the department's response to the devastating Southern California fires of 2007? It has received a report but is any further action planned?*

**Answer:** Periodic reports have and will continue to be made to the BOF regarding the 2007 fire events. All board members, agency personnel, and public citizens are highly concerned that significant losses from wildland fire events events be minimized.

California has one of the best if not the best fire protection and forest regulation programs in the nation. However, we need to continue seeking new approaches and solutions to difficult problems associated with defensible space, ignition resistant buildings, suppression services, firefighter/public safety, pre-fire management fuel reduction treatments, and fire protection organization/operations.

The BOF along with Cal Fire has and will continue to keep as a foremost priority protection and pre-fire management of California's natural landscapes and developed environments. One critical issue facing the BOF and California involves gaining resolution of conflicting regulations between agencies (e.g., BOF as contrasted to Tahoe Regional Planning regulations).

A specific concern to all BOF members is the lack of necessary resources to conduct independent assessments. Significant agency collaboration, assistance, cooperation, and financial support are needed to enhance BOF involvement in these difficult issues facing California.

## Fire Protection Regulations—Lake Tahoe

In June 2007 over 200 homes burned in the Angora fire in South Lake Tahoe. Many residents have complained that they were unable to gain the necessary permits from the Tahoe Regional Planning Agency to remove trees around their home to provide a defensible fire space.

While the Board of Forestry and Fire Protection is charged with administering the Forest Practices Act, one section of the act, Public Resources Code Section 4516, gives the Tahoe Regional Planning Agency the authority to enact more stringent regulations than the Board of Forestry. There are in essence two sets of regulations, and in the Lake Tahoe area the Tahoe Regional Planning Agency's regulations take precedence. The Board of Forestry has been working with the Tahoe Regional Planning Agency to reconcile their regulations as much as possible.

7. *Please describe the board's efforts to work with the Tahoe Regional Planning Agency to reconcile the regulations.*

**Answer:** The BOF has made major efforts to reconcile some of the challenges associated with management of forest lands in the Tahoe Basin. Specifically, the BOF has:

- Began work in 2005 to authorize a Tahoe Exemption process.
- Considered changing the definition of Timberland in the Tahoe Basin to remove the need for a CDF permit
- Developed a White Paper dated July 29, 2005 that outlined a process of creating a consolidated tree removal permit and a unified project oversight authority program. During the period within which the White Paper was being developed discussions occurred with the BOF, LRWQCB, and TRPA. Final resolution on these difficult issues was not obtained due in part to a lack of agency support to approve a Budget Change Proposal that would have authorized a biomass facility and conservation camp in the Tahoe Basin for fuel reduction work. So far as much as the BOF did make earnest efforts to resolve difficult fuel management concerns in the Tahoe Basin prior to the 2007 Angora fire, political barriers impacted the ability of the BOF to seek full resolution of the Tahoe Basin fuel management issues.
- The BOF has developed a streamlined permit process for fuel reduction statewide.

## Coho Salmon Protection

Coho salmon from San Francisco to the Oregon border have experienced a significant decline in the past 40 to 50 years. According to a study done for the National Marine Fisheries Service, wild populations of coho salmon today are less than 1 percent of what they were in the 1940s.



In 1994 the Department of Fish and Game petitioned the Board of Forestry and Fire Protection to list coho salmon as a sensitive species. The board declined. In 1996 the state Fish and Game Commission listed coho salmon as endangered. Then in 1997 the federal National Marine Fisheries Service listed coho salmon as threatened.

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Earlier this year the board adopted coho salmon incidental-take assistance regulations. These regulations would apply additional protections where coho salmon are present, and the Department of Fish and Game determines that coho will likely be taken by logging actions. The Department of Fish and Game provided the board with another rule package that would have extended protections for coho salmon in their total range, but the board declined to adopt that package. Despite the opinion of state and federal fisheries biologists that Forest Practice Rules did not adequately protect salmon, the board continues with its own scientific literature review to see if additional protections are needed for salmon. In July the board issued a request for proposal to carry out the literature review. In August the two bids received were rejected, and a new request for proposal is expected to be issued by the end of this year. The literature review was initiated one and a half years ago by the board to determine if changes were necessary to the Threatened and Impaired Watersheds regulations.

During the recent hearings on the 2007-08 budget, the Senate Budget and Fiscal Review Subcommittee No. 2 removed \$10.9 million in salmon recovery funds from Proposition 84 because, in large part, they felt that the board had not adopted sufficient coho salmon protection rules. The final budget did not contain the \$10.9 million in salmon recovery funds.

8. *What types of additional protections are expected from the adoption of the coho salmon incidental-take assistance regulations?*

**Answer:** The BOF has adopted regulations proposed by the Fish and Game Commission and the Department of Fish and Game. The adopted regulations which had full agency (i.e., CDFG, CDF, Fish and Game Commission, BOF)

support are necessary to provide protections for coho salmon via the Incidental Take Permit process.

Numerous issues still require further discussion and collaboration such as: 1.) an integrated approach to habitat recovery that distributes responsibility across all parties rather than a selected few; 2.) development of a consumption ethic; 3.) complete evaluation of the impacts of water development projects and dams; and 4.) much more...

9. *What is your view of the challenges in adopting permanent regulations to protect coho? Why are there still no permanent regulations in place after so many years?*

**Answer:** Permanent regulations have been adopted to protect coho salmon. The BOF as part of its recent actions to adopt Incidental Take Permit regulations authorized threatened or impaired watershed rules (14 CCR 916.9 *Protection and Restoration in Watershed with Threatened and Impaired Values*) in watersheds with coho salmon. Significant collaboration must continue as we work to resolve these difficult issues associated with anadromous fish species such as coho.

10. *After a year and a half the board has yet to begin its scientific literature review. When will this review be complete and why is it taking so long? Why did the board believe it was necessary?*

**Answer:** Science must be the basis for resolution of the issues associated with threatened/impaired watersheds and management of anadromous fisheries. The Board of Forestry and Fire Protection has appointed a Technical Advisory Committee (TAC) of highly qualified experts to review riparian area management concerns.

Progress associated with development of the scientific literature review is affected by several factors including: a.) lack of financial resources to fully support rapid completion of the scientific review; b.) BOF direction to not sacrifice accuracy of scientific information for speed; c.) insuring an open and transparent process based on science and not politics; d.) the need to get further resources and committed individuals to serve on the BOF Research and Science Committee.

The BOF is currently working to develop a Charter for the Research and Science Committee and with hopes to have that committee in place by the end of 2008 or early 2009.

11. *Has your board discussed with the Department of Fish and Game what additional coho protections would be necessary to justify the restoring of salmon recovery funds in the budget?*

**Answer:** Based on information provided to me, no formal consultation between the BOF and the Department of Fish and Game has occurred. However, I suspect significant discussion of this topic has occurred within various agencies such as



CDF, CDFG and others at various levels. The BOF and the Fish and Game Commission along with associated agencies remain fully committed to find approaches for the protection and restoration of salmonid habitat.

12. *Should the board develop timber harvest rules that protect all salmon species, or should the increased protections be provided for only coho salmon? If only for coho salmon, why?*

**Answer:** The BOF has consistently stated that coho protection is only a first step. Significant collaboration, funding, and agreement at various levels within various agencies of California government will be needed to provide protection for all salmonid species. Such protection could take the form of a statewide Habitat Conservation Plan. However, sufficient funding, staff resources, and priority recognition by agency/board/commission and legislative officials is needed to initiate momentum for development, support and approval of a statewide Habitat Conservation Plan.

The BOF has and is proactively taking actions to protect salmonid habitat. Such actions include:

- Development of a monitoring and adaptive management program for timber harvest operations in watersheds with salmonids.
- Development and adoption of interim Forest Practice Rules for protection of listed anadromous salmonids termed Threatened or Impaired (i.e., T/I) rules under 14 CCR 916.9, 936.9, and 956.9. The current T/I rules will expire at the end of December 2008.
- Initiation of a contract to develop a Literature Review focused on evaluating the scientific basis for T/I rules
- Continued support of the Monitoring Study Group comprised of agency (i.e., CDF, CDFG, CGS, and RWQCBs), the public, timber industry, and BOF personnel
- Development of a new Research and Science Committee (RSC). A draft charter has been developed. Further discussion is occurring.
- Support for the Interagency Mitigation Monitoring Program (IMMP)
- Support for the new Forest Practice Rules Implementation and Effectiveness Monitoring Program (FORPRIEM). Data is collected by Cal Fire Forest Practice Inspectors. This program is intended to compliment the non-random IMMP monitoring program
- Support for the existing and new cooperative instream watershed monitoring projects located in non-federal forest watersheds throughout California located at: Caspar Creek, Garcia River, South Fork Wages Creek, Judd Creek, and Little Creek. Little Creek is located on Cal Poly's Swanton Pacific Ranch and School Forest for which I have a great deal of knowledge and experience
- Formation of a Monitoring and Tracking subcommittee of the MSG
- Development of a risk based approach to cumulative watershed effects analysis where new technologies such as NetMap will be evaluated

- Continued review and improvement for programmatic long-term management models such as the PTEIR, SYP and NTMP process with emphasis on efficient allocation of resources to address sustainable resource utilization
- Work with Cal Fire agency personnel to develop a long-term repository for the monitoring and scientific research associated with the programs listed above
- Proactively working with agency officials, the public, National Marine Fisheries, and others to conserve threatened and endangered salmonids

## Timber Harvest Reviews

The Department of Forestry and Fire Protection is the lead agency for timber harvest reviews and is responsible for ensuring the sustainable production of timber. However, two of the other trustee agencies—the Department of Fish and Game and the regional water quality control boards—have statutory mandates that on occasion are more protective of resources and more restrictive of logging activities. Historically, this has created a conflict between the agencies, with the Department of Forestry and Fire Protection often resistant to incorporating the changes requested by the Department of Fish and Game or regional water quality control boards.

13. *How does the board work with the Department of Forestry and Fire Protection, the Department of Fish and Game, and the regional water boards to resolve these conflicts?*

**Answer:** The BOF diligently works to maintain an open and transparent process to alleviate potential issues between agency officials. Continued and significant cooperation occurs between CDF, BOF, numerous agency, public, and industry officials and citizens. This open and transparent process has largely enabled the BOF to discuss and resolve conflicts. Current resolution and approval of the Jackson State Forest EIR, Findings, Mitigation/Monitoring Plan, Management Plan, and Advisory Committee Charter is such an example of excellent collaboration.

## Cumulative Impacts of Timber Harvesting

Over the last several years, governmental and scientific reports have pointed out that the timber harvest rules do not adequately address the cumulative impacts of harvesting timber. These studies indicate that (1) the decision whether to allow timber harvesting in a given watershed is made with inadequate scientific assessments, and (2) timber harvesting is not analyzed in terms of the potential continuing effects of prior timber harvesting.

14. *Should the issue of cumulative impacts be addressed by the board? If so, how?*

**Answer:** Yes the BOF has and will continue to focus on cumulative impacts associated with forest management and timber harvest activities. The Dunne Report indicated that the lack of risk assessment is a major impediment to effective cumulative impact assessment. However, there are numerous issues that are currently yet unresolved such as:

- Development of cost-effective risk assessment cumulative effects methodology
- Development of computer modeling techniques
- Ongoing evaluation of computer modeling approaches in an adaptive management/updating manner
- Adequate funding to support personnel costs associated with both the cumulative impacts analysis and subsequent feedback monitoring programs
- Disparities between large industrial owners as compared to smaller non-industrial forest land owners in terms of carrying the costs associated with required cumulative impacts analysis
- Inadequate allocation of state funds to support cumulative effects analysis
- And much more...

15. *How do you believe the rate of harvest should be addressed by the board?*

**Answer:** Growth dramatically exceeds timber harvest on commercial timberland here in California. Restocking rules are in place that prevent and prohibit deforestation of California state and private lands. The sustained productivity of California's timberlands and environmental protection during all forest management activities are a primary objectives of the 1973 Z'Berg-Nejedly Forest Practices Act and the BOF.

**Concluding Comment:** Please contact me should you require further information.



CALIFORNIA LEGISLATURE

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GREGORY SCHMIDT  
SECRETARY OF THE SENATE

NETTIE SABELHAUS  
APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA  
CHAIRMAN

January 7, 2008

Thomas L. Walz

Dear Mr. Walz:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of Board of Forestry and Fire Protection on Wednesday, February 6, 2008. We request that you appear. The meeting will begin at 1:30 p.m. in Room 113 of the State Capitol.

We have prepared the following questions to which we would appreciate your written responses. Please provide your responses by January 25, 2008.

We would also like to receive an updated Form 700, Statement of Economic Interest, by January 25<sup>th</sup>.

Statement of Goals

1. *What are your goals as a member of the Board of Forestry and Fire Protection? What do you hope to accomplish during your term? How will you measure your success? **The Board of Forestry and Fire Protection has developed a specific Strategic Policy, with established goals and strategies to lead California into the next decade. My personal goal is to help develop and implement policies that reduce the risk of environmental degradation while promoting economic prosperity for all Californians. I believe the highest environmental risk is associated with catastrophic wildfire. The measure of success would be implementation of policies that improve ecosystem health and reduce the risk of catastrophic wildfire.***
2. *The Board of Forestry has five public members, three members in "forest products industry" slots, and one member in a "range livestock industry" slot. As a member of the board, whose interests do you represent? If the forest products industry's*



*interests are at odds with the public's interests, what do you do? I was appointed by the Governor to fill a forest products industry slot. I recognize that while appointed to fill a "slot" my obligations are to represent the best interests of the State of California.*

3. *Your board has few staff and depends on the Department of Forestry (CAL-Fire) for its information. What staff is available to assist you with your often-complex issues? Do you believe you can exercise independent judgment when setting policy given this situation? The Board and Department staff have worked diligently to provide information needed to promote good decision-making. The Board is moving in a positive direction with the appointment of the Technical Advisory Committee with a desired goal of utilizing peer-reviewed science to bring clarity to difficult resource questions. Given good scientific information, wise policy decisions are easier to develop and implement.*

### California Fire Plan

The Board of Forestry and Fire Protection is responsible for developing both policy and regulations for the forestlands and fire protection system of the state. The California Fire Plan is the state's road map for reducing the risk of wildfire. The plan emphasizes what needs to be done before a fire starts. The plan looks to reduce fire-fighting costs and property losses, increase firefighter safety, and to contribute to ecosystem health. The current plan was finalized in March 1996.

In an October 24, 2007, letter to the governor, the board said it would begin a critical in-depth review of the California Fire Plan.

4. *How often is the California Fire Plan reviewed by the board? There is not a statutory timeline as to reviewing the current California Fire Plan, however the Board of Forestry and Fire Protection began review of the current plan in 2005 with the Resource Protection Committee gathering information from Department staff. The Committee has continued to review the Departments efforts to implement the 1996 Fire Plan.*
5. *What is the timeline for the board's review? Will the board, as a whole, review the plan, or will this review be assigned to one of the board's committees? The Resource Protection Committee has asked the Department and the State Fire Marshall to participate in discussions for updating the California Fire Plan. A specific timeline has not been established to produce an end product.*

### Southern California Fires

6. *How is the board involved in assessing the department's response to the devastating Southern California fires of 2007? It has received a report but is any further action planned? **The Board was not included on the Governors Blue Ribbon Commission to evaluate the response to the Southern California fires of 2007. The Board is kept informed by the Department of the on-going investigation, but results of that study have not yet been released. The Board does believe that implementation of the newly updated building codes as well as adherence to the fire-safe clearance regulations adopted by the Board will be a positive step towards reducing damages to homes and infrastructure.***

### **Fire Protection Regulations—Lake Tahoe**

In June 2007 over 200 homes burned in the Angora fire in South Lake Tahoe. Many residents have complained that they were unable to gain the necessary permits from the Tahoe Regional Planning Agency to remove trees around their home to provide a defensible fire space.

While the Board of Forestry and Fire Protection is charged with administering the Forest Practices Act, one section of the act, Public Resources Code Section 4516, gives the Tahoe Regional Planning Agency the authority to enact more stringent regulations than the Board of Forestry. There are in essence two sets of regulations, and in the Lake Tahoe area the Tahoe Regional Planning Agency's regulations take precedence. The Board of Forestry has been working with the Tahoe Regional Planning Agency to reconcile their regulations as much as possible.

7. *Please describe the board's efforts to work with the Tahoe Regional Planning Agency to reconcile the regulations. **The Board recognizes that Fuels Reduction and fire-safe clearing around homes and infrastructure greatly reduce the risk of damage from catastrophic wildfire. Implementing existing Forest Practice rules on private property will only be successful when combined with Federal efforts to reduce fuels on public property. The Tahoe Regional Planning Agency is best suited to meld the private and public efforts necessary to achieve the desired future conditions for the Tahoe Basin.***

### **Coho Salmon Protection**

Coho salmon from San Francisco to the Oregon border have experienced a significant decline in the past 40 to 50 years. According to a study done for the National Marine Fisheries Service, wild populations of coho salmon today are less than 1 percent of what they were in the 1940s.



In 1994 the Department of Fish and Game petitioned the Board of Forestry and Fire Protection to list coho salmon as a sensitive species. The board declined. In 1996 the state Fish and Game Commission listed coho salmon as endangered. Then in 1997 the federal National Marine Fisheries Service listed coho salmon as threatened.

The timber industry is interested in the state's coho salmon listing because, under current statutes, if a timber operation might kill coho salmon, the timber company must first obtain an incidental take permit from the Department of Fish and Game.

In 2000 the board amended the Forest Practice Rules to include Protection for Threatened and Impaired Watersheds regulations to enhance protection of listed salmon species. These regulations were adopted in 2000 because a state Scientific Review Panel concluded that the Forest Practice Rules did not sufficiently protect salmon. The Threatened and Impaired Watershed rules were to be a first step in increasing salmon protections. That is the only step that has been taken to date. These regulations were temporary and were extended in 2003, 2004, 2006, and 2007. They will expire December 31, 2008. In July 2006 the Resources secretary called on the board and the Department of Fish and Game to develop a set of comprehensive rules to protect and restore all salmon populations. Since 2006 the discussions at the board have moved from protection of all salmon populations to discussion on rules to cover only those streams where coho salmon are currently present.

Earlier this year the board adopted coho salmon incidental-take assistance regulations. These regulations would apply additional protections where coho salmon are present, and the Department of Fish and Game determines that coho will likely be taken by logging actions. The Department of Fish and Game provided the board with another rule package that would have extended protections for coho salmon in their total range, but the board declined to adopt that package. Despite the opinion of state and federal fisheries biologists that Forest Practice Rules did not adequately protect salmon, the board continues with its own scientific literature review to see if additional protections are needed for salmon. In July the board issued a request for proposal to carry out the literature review. In August the two bids received were rejected, and a new request for proposal is expected to be issued by the end of this year. The literature review was initiated one and a half years ago by the board to determine if changes were necessary to the Threatened and Impaired Watersheds regulations.

During the recent hearings on the 2007-08 budget, the Senate Budget and Fiscal Review Subcommittee No. 2 removed \$10.9 million in salmon recovery funds from Proposition 84 because, in large part, they felt that the board had not adopted sufficient coho salmon protection rules. The final budget did not contain the \$10.9 million in salmon recovery funds.

8. *What types of additional protections are expected from the adoption of the coho salmon incidental-take assistance regulations? **The coho salmon incidental-take***

**regulations adopted by the Board were in conjunction with the Department of Fish and Games 2112 Regulations for "incidental take of a listed species". The 2112 Regulations are the driving factor for protection measures for coho salmon and the Forest Practice Rules passed by the Board of Forestry are part of the implementation strategy.**

9. **What is your view of the challenges in adopting permanent regulations to protect coho? Why are there still no permanent regulations in place after so many years? Coho protection measures adopted by the Board in 2000 have been periodically reviewed by the Board and extended as needed pending scientific review of those standards. Using peer reviewed science to determine the adequacy of the rules will result in better information, leading to decisions that will provide protection measures that are specific to the needs of coho salmon.**
10. **After a year and a half the board has yet to begin its scientific literature review. When will this review be complete and why is it taking so long? Why did the board believe it was necessary? Bids have been received and it appears that review should be completed in 2008. While there have been delays in processing advertisements for bids, the main stumbling block appears to be the limited funds available. The Scientific literature review is a critical component in trying to reduce the polarization and tension created when developing rule packages. Good scientific information enables decision-makers to adequately assess the consequences of individual policies.**
11. **Has your board discussed with the Department of Fish and Game what additional coho protections would be necessary to justify the restoring of salmon recovery funds in the budget? The Department of Fish and Game has not approached the Board on what would be necessary to restore salmon recovery funds in the budget. The Board and DFG are working on a joint salmonid policy that seeks to mesh the two regulatory processes.**
12. **Should the board develop timber harvest rules that protect all salmon species, or should the increased protections be provided for only coho salmon? If only for coho salmon, why? The Board adopted the coho incidental take assistance rule package in conjunction with the DFG 2112 regulations. The 2112 regulations are designed for protection of "listed" species this rule package was designed to protect coho salmon. The Board has been presented monitoring study information from 2002 and 2006 that emphatically state that when properly implemented current Forest Practice rules maintain environmental conditions within the tolerance range of most salmonid species. Coho salmon have one of the narrowest tolerance ranges of all salmonids and the additional protection measures adopted by the T&I rules address those narrow tolerance ranges.**



### Timber Harvest Reviews

The Department of Forestry and Fire Protection is the lead agency for timber harvest reviews and is responsible for ensuring the sustainable production of timber. However, two of the other trustee agencies—the Department of Fish and Game and the regional water quality control boards—have statutory mandates that on occasion are more protective of resources and more restrictive of logging activities. Historically, this has created a conflict between the agencies, with the Department of Forestry and Fire Protection often resistant to incorporating the changes requested by the Department of Fish and Game or regional water quality control boards.

13. *How does the board work with the Department of Forestry and Fire Protection, the Department of Fish and Game, and the regional water boards to resolve these conflicts? **The Board recognizes that conflict resolution most often comes when conflicts are resolved at the lowest possible level. The Board has consistently encouraged the Department to negotiate with the various parties to reach a settlement over most disputes.***

## Cumulative Impacts of Timber Harvesting

Over the last several years, governmental and scientific reports have pointed out that the timber harvest rules do not adequately address the cumulative impacts of harvesting timber. These studies indicate that (1) the decision whether to allow timber harvesting in a given watershed is made with inadequate scientific assessments, and (2) timber harvesting is not analyzed in terms of the potential continuing effects of prior timber harvesting.

14. *Should the issue of cumulative impacts be addressed by the board? If so, how?*  
***The Forest Practice rules and CEQA require substantial disclosure of potential for significant adverse cumulative impacts from timber harvesting.***
15. *How do you believe the rate of harvest should be addressed by the board?*  
***Current Board rules address rate of harvest through a combination of adjacency, rotation age, habitat and waste discharge constraints. Those constraints reduce the potential of a significant adverse impact.***

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

DON PERATA

DP:KW

cc: Board of Forestry and Fire Protection



JAN 18 2008

## Statement of Goals

## Appointments

The Director of the Lottery is responsible for the management of the California Lottery. Over the last 20 years the lottery has had 19 directors.

- 1. What are your goals as the director of the California Lottery? What have been your most significant accomplishments to date as the director of the California Lottery? What do you hope to further accomplish during your tenure? How will you measure your success?***

As Director of the Lottery, my goal is, first and foremost, to set the organization on a track for increasing revenues to benefit education. After a nearly yearlong process of reviewing the organization internally, working with other Lottery directors, our Commissioners, industry experts and other businesses, we formulated a long term Business Plan, the first of its kind for this organization. I consider the Business Plan my greatest achievement to date. The Business Plan memorializes the collective knowledge and history of this organization and its dedicated staff. Not only does it convey the organization's past, but it points us towards the future. It represents a foundation from which all future decisions will be made. The four pillars in the Business Plan are my strategies to achieve long term sustainable growth within our current statutory authority: focus on long term planning, improve our brand image, shift the jackpot paradigm, and modernize operations.

As you note, there has been a veritable revolving door in the executive office. This has created an environment of short term, year-to-year planning, low staff morale and unsustainable growth. When I arrived at the Lottery, it had been many years since any type of long term planning was done and no one could remember the last time there was a comprehensive marketing plan. The challenge ahead is great and success hinges on fundamental change in the way we plan for the future, market and distribute our products, communicate with stakeholders, manage our business systems, maintain the public trust, and maintain a motivated workforce.

As a sales and marketing enterprise, my staff is my greatest resource. They are the foundation of any change and will carry on the business long after my tenure. I have called for a lot of change and retooling by the staff in the last year. They have risen to the challenge and have largely embraced the new course I have set. As with any change, there is always some staff that will be resistant. Therefore, to continue this positive momentum, I believe improving communication with staff is critical. Last year, I set up a separate "Ask Joan" e-mail address that only I have access to. This has been a tremendous tool that I regularly use to communicate directly with staff and have encouraged them to send me questions and share ideas. I have held many large and small meetings with staff both at headquarters and in the field to answer questions, discuss the Business Plan and marketing strategies so we can speak with one voice as an



organization. I am working to create an on-going employee recognition program to more publicly appreciate staff for their excellent work. Some examples include highlighting our staff in the Annual Report to the Public and involving staff in the planning of employee events. If the California Lottery is going to increase revenues, it will do so only through the hard work and efforts of the staff throughout this organization. It is important to me to create an atmosphere where their ideas are valued and their work is appreciated.

The challenge ahead is great. We are often compared to other states with higher per capita sales, but unlike these other states we cannot increase prize payouts. We must be more innovative and creative to maintain and grow sales and my staff has responded. In the short time I have been Director, we have introduced ticket gift packs for the holidays, gift cards, and a new business model. Not only were these significant achievements for California, they were all industry firsts. These efforts represent only the surface of what the staff is capable of when challenged to think outside-of-the-box. Over the next two years, we will be implementing our 24 month marketing and product plan, introducing a completely new television game show, and exploring a major revision to the Super Lotto Plus game. I believe the coming years will prove to be some of the most exciting times in Lottery history.

In the excitement about new games, new commercials, and new television shows, it is easy to forget the other half of any truly successful lottery: maintaining the public trust. I am fortunate enough to have inherited the best lottery law enforcement division in the country. I have directed my law enforcement division to be more active in consumer protection by helping educate the public about the numerous lottery scams they may be victim to, increasing outreach to the law enforcement community, increasing consultation with other lotteries who often look to California for leadership, increasing proactive investigations, and developing new methods of ensuring our players are protected from fraud and theft. I am happy to report that the overwhelming majority of our retailers are outstanding businesses. I have committed to ensuring that the acts of the few poor retailers do not detract from the reputation of the industry by holding them all to a higher standard of conduct. In addition, I have taken advantage of new equipment as it has become available that helps to protect and empower the customer such as check-a-ticket readers that allow customers to check their own ticket and multi-media monitors that display the customer's transaction.

I have also increased our outreach with the education community, legislature, retailers, and local communities. I understood immediately that there was a fractured relationship with not only our beneficiary, but the legislature as well. Over the course of the past year and a half, I have reached out to the education community to hear their concerns and established a dialogue regarding the operation of the Lottery and how we can better educate the public accurately about the benefits of our products. At the beginning of the last legislative session

I requested meetings with every freshman member in order to create better communication and educate these new members regarding our organization. In addition, I met with the Chairs and Vice Chairs of the Senate and Assembly Governmental Organization Committees to not only hear their concerns but to offer myself as a resource to them. The Lottery's outreach staff works with all segments of the community; business organizations, chambers of commerce, public safety organizations, and local government organizations to create a dialogue regarding the Lottery, its products and its benefits. It is evident to me that we must create stronger relationships in the communities in order to create a stronger brand image. I am personally committed to the time it will take to work with these groups to establish a greater understanding of the Lottery.

There is only one true external measure of success for the Lottery and its management: contributions to education. My personal measure of success will also include whether I have reshaped this organization so that it is better managed and more forward thinking than when I found it.

### **Privatization of the Lottery**

The Governor has, in the past, indicated his interest in privatizing the lottery. One proposal would be to lease the lottery to a private firm for up to 40 years and, in exchange, the state would receive \$14 to \$37 billion, with the possibility of a large lump sum up front.

#### **2. *What factors do you believe are important for the state to consider in assessing the benefits or disadvantages of privatizing the lottery?***

I understand that there have been a number of proposals made regarding the potential lease of the California Lottery. Ultimately, this is a public policy decision that members of our state's leadership will decide. However, I stand ready to assist as the discussions continue, offering my knowledge of current operations, experiences with other lotteries in this country and abroad, and experience with finance. Things that need to be considered as this potential lease conversation continues are the integrity, security, honesty, and fairness of the operation of the Lottery as mandated by the voters when the Lottery was created in 1984.

### **Lottery Performance**

Since 2001 lottery revenues have contributed more than \$1 billion per year to education. When compared to other states, California ranked 28<sup>th</sup> among 43 state lotteries in terms of per capita sales.

At its June 27, 2007, meeting, the commission adopted its 2007-10 Business Plan which states that the lottery's history of short-term planning is holding it back and that the organization needs significant change if it is



going to survive in today's marketplace. The Business Plan discusses portfolio optimization or changing the payout level of its games to maximize profits to education. It discusses expanding its base of retail outlets and breaking into the multilane retailers, such as Wal-Mart and Sears. The Business Plan also states that many in the lottery industry believe California to have the most onerous restrictions in the nation. At a Senate hearing in October you said that, given the new three-year Business Plan and under current restrictions, you could increase lottery sales between 28 and 35 percent.

**3. Under what restrictions does the lottery operate that limit it maximizing revenues? Please identify the most onerous restrictions you face in operating the lottery.**

Although there are other restrictions that should be changed to maximize the operation and performance of the Lottery, the following are the most significant impediments to maximizing revenue for education in a responsible way.

*Revenue allocation limitations – Government Code Section 8880.4*

Under existing law, the Lottery must return at least 34 percent of annual revenue to public education. To ensure the Lottery meets this 34 percent requirement, the Lottery must carefully manage its prize payouts. Maintaining a 34 percent profit margin means the Lottery cannot increase prize percentages or make other logical business investments that would increase total bottom line dollars to education. For example, draw games have a higher profit margin than Scratchers games, although both are profitable products. In order to meet our 34 percent profit margin obligation in years where draw games sales decline, the Lottery is forced to restrict the distribution and sale of Scratchers tickets.

*Fixed prize restrictions – Western Telcon*

The Lottery cannot offer fixed prizes because of the California Supreme Court decision in *Western Telcon, Inc. v. California State Lottery*, 13 Cal.4th 475 (1996). The sales performance of certain Lottery games has been severely impeded since the Western Telcon decision. That case held, based on the statutory definition of "lottery games" contained in the Lottery Act and other California statutes, that the Lottery could not offer fixed prizes in its lottery games unless the total number of such prizes could be determined with precision in advance of the draw or play of the game.

California is the only state in the nation with this restriction. Among other things, this particular restriction makes it difficult to market games in a manner that players can know the prizes they are playing for.

### *Technology restrictions – Government Code Section 8880.28*

Under existing law, the Lottery cannot introduce any “changes in the types of games or methods of delivery of those games” when such changes involve new technologies that did not exist, were not widely available, or commercially feasible in 1984. This effectively keeps the Lottery in the “dark ages” of technology and out of the media revolution that has transformed our society’s means of communication and retail transactions. The ability for the Lottery to innovate, communicate and sustain relevance with its customers will determine our success in the future.

### *Ticket dispenser limitations – Government Code Section 8880.335*

Under existing law, the Lottery is specifically authorized to adopt regulations allowing for the use of certain types of electronic or electromechanical devices to sell lottery tickets, subject to certain restrictions. The statute was written, and added to the Act, in 1997, and its detailed description of acceptable functionalities for then-existing lottery ticket vending machines is substantially outdated.

No other state lottery jurisdiction is burdened by the narrowly constructed provisions contained in this amendment, or by the resulting ambiguity it brings to what Lottery ticket dispensers can and cannot do. Moreover, the purpose of the 1997 amendment, which was to confirm the legality of the Lottery’s existing fleet of instant ticket vending machines following the decision in *Western Telcon*, *supra*, has become moot since the decision in *Trinkle v. California State Lottery*, 105 Cal.App.4th 1401 (2003), which held that these machines were legal under *Western Telcon* without the 1997 amendment. Under current restrictions, ticket dispensers cannot issue change, coupons or advertising. Ticket dispensers cannot use television or video screens to display facsimiles of tickets. This prevents the Lottery from displaying graphical “how to play” information on its ticket dispensers.

### *Prohibition against Retained Earnings*

The Lottery’s enabling legislation requires that the Lottery transfer all net earnings (profits) to public education on an annual basis. In practice, the Lottery is not allowed to retain any profits from year to year for the purposes of making long term investments that would generate additional profits for public education. This includes increasing payouts for certain games that would create a minimum 2 to 1 return in profits, such as Scratchers games and purchasing equipment for new retailers.

Should I be confirmed, I will continue to implement the Business Plan and expect to see incremental results over the next two years. More importantly, I hope to establish the California Lottery as a well-managed organization of the highest



integrity in the eyes of the Legislature in the hopes that they will agree that it is good public policy to implement best practices legislation here in California.

**4. What changes are you planning so that the lottery can better compete in the marketplace? How did you arrive at the benefit of these changes? How did you determine that the changes do not bump up against current restrictions?**

In the Lottery's 2007 Business Plan, I lay out the case for four core strategies that would best increase the Lottery's contributions to education within the current legal framework:

- (1) focus on long term planning;
- (2) improve our brand image;
- (3) shift the jackpot paradigm; and
- (4) modernize operations.

I arrived at these core strategies after a yearlong process of careful evaluation that included discussions with lottery staff, fellow lottery directors, and industry experts; reviewing white papers and research studies; analyzing historical data; careful research of case law and statutory restrictions and studying lottery industry trends and best practices in the United States and abroad.

*Focus on Long Term Planning*

For several reasons, including a high turnover rate in leadership, year-to-year budgeting and planning, and short term strategies, the Lottery has not historically focused on long term planning. However, strategies such as increasing prize payouts on Scratchers games and increasing jackpots on lotto games is no longer an option.

As a result of short term planning, the Lottery has reached the point where some core business functions have suffered. Our brand image is poor, our past strategy for growth has come to an end, and our systems and business processes are in need of modernization.

I have established a process wherein the Lottery is now focusing on long term planning as reflected in the 2007 Business Plan. The key strategic initiatives presented in this Plan have all been developed with an eye toward long term and sustainable growth that will set the Lottery on a course to realize its full potential under current restrictions.

*Improve our Brand Image*

Our continuous tracking study has measured demographic information as well as consumer attitudes toward the Lottery for many years. The Lottery has also

recently conducted several other studies designed to measure the attitudes of players, non-players, teachers, educational stakeholders and employees. These studies clearly and consistently conclude that the Lottery has a very poor brand image. Consumers view the Lottery as representative of big government or big corporations and many don't know where all the Lottery money goes. These attitudes negatively affect consumers' desire to participate in the Lottery and curtail sales.

The Lottery is in the process of developing a long term marketing strategy to reinvigorate our brand image. It is important to note that our brand image is more than just sales and marketing material. Any lottery's brand image is also closely tied to its integrity and level of trust from its customers. This is why we are improving our law enforcement efforts by being more proactive, reaching out to the law enforcement community, ensuring the quality and integrity of our products, and increasing our consumer protection awareness and problem gambling prevention efforts.

### *Shift the Jackpot Paradigm*

Reliance on large jackpots as the basis for playing draw games can generate tremendous swings in sales. Added to this is the jackpot fatigue that players, and the media, experience when they become accustomed to larger and larger jackpots.

Unfortunately, increasing jackpot sizes invariably comes at the expense of longer odds and longer periods between what are perceived to be attractive jackpots. This further feeds into the belief that no one wins anymore, so jackpot fatigue combines with poorer odds to result in declining sales. The California Lottery may be the most vulnerable lottery in the country because of revenue allocation limitations force us to rely the most heavily on sales from our large lotto games.

We are implementing a strategy to rely less on large jackpot games. Shifting the jackpot paradigm entails less focus on large jackpot games and providing consumers with fun, entertaining games that are conducive to more regular play, and provide more winning experiences at smaller but meaningful prize levels.

### *Modernize Operations*

While the Lottery has focused on allocating all surplus administrative funds in Scratcher prize payouts to boost sales, many parts of our organization have gone neglected. Without a modern infrastructure, we must rely on lengthy and costly programming or manual processes to take advantage of new business opportunities. Our current systems and processes are not flexible or nimble enough to keep up with changing consumer and retail trends.

A good portion of our accounting systems and business processes are based on essentially the same model created in the 1980s. These systems and processes are frequently inflexible, restricting our ability to experiment with new business models and streamline operations. We have engaged the help of a consulting firm to review our business rules and operations and make recommendations for improvement.

Our distribution warehouses are no longer optimally sized for their workload and modern efficiency tools are not used as extensively as possible. We recently purchased a new Northern California distribution center that has allowed us to merge operations from two locations into one and to employ updated technology to aid in faster deliveries to our field offices and retailers.

Our current management information systems have limited reporting capabilities, and new business information can take days or weeks to compile. There is no information system that allows managers to easily navigate to, and extract, desired sales and retailer data. Without a practical way to analyze business data, opportunities for business improvements are often missed. This spring we will work to identify what our critical data needs are in order to develop a much needed performance management system.

While *modernizing operations* is used as an umbrella term, it also encompasses our efforts to establish a succession plan for our aging workforce.

## **Problem Gambling**

The California Research Bureau estimates that problem and pathological gambling costs the state \$1 billion a year. The state Office of Problem Gambling, administered by the Department of Alcohol and Drug Programs, has a \$3 million budget which pays for staffing a problem-gambling hotline. The lottery last year devoted about \$100,000 for its problem gambling program. The lottery Web site refers people to the Office of Problem Gambling and offers information about problem gambling and how to get help for a gambling addiction. The lottery also contributes financially to support a hotline counseling service and has published brochures on the subject.

### **5. *Do you believe there is more the lottery should do to assist people who might be problem gamblers? What specific actions would you recommend?***

The California Lottery is proud to have the longest standing problem gambling awareness program in the state. Although not required by the Lottery Act, the Lottery has supported a problem gambling helpline and provided this helpline information on brochures, tickets and terminals since 1998. The Lottery's



problem gambling efforts have grown over time and we continue to ensure that education and awareness of problem gambling resources are included in its communications with the public. Since 2003, the CSL has sponsored Public Service Announcements (PSAs) on both television and radio that air during National Problem Gambling Awareness Week. In 2006, the Lottery expanded this effort and aired PSAs throughout the entire month of March. In 2007, our district sales staff participated in an educational segment on problem gambling awareness. For 2008, we not only embarked on a campaign to better educate our retail network on the issue of problem gambling, but we are working with OPG to create fresh PSAs that can be used by all gaming entities throughout the state in a year-round rotation in order to raise awareness.

After participating in a Senate Governmental Organization hearing last year, it became apparent that the Legislature would prefer the problem gambling efforts in the state to be centralized under the California Office of Problem Gambling. To that end, for FY 2008-09, the Lottery has committed \$250,000 to the California Office of Problem Gambling (OPG) to cover the cost of the helpline, as well as additional programs at OPG. This effort will allow the professionally trained staff at OPG to more broadly administer the programs and services they understand best benefit Californians.

As more information and treatment become available in California, we are committed to continuing to address opportunities to increase the awareness of this issue.

**6. Can you measure the number of people that have been referred from the lottery's Web site to the Office of Problem Gambling? How do you measure the success of this referral process?**

While we cannot currently measure the amount of people referred to the OPG website via the links of the California Lottery's website, we are able to measure how many visits have been made to the problem gambling awareness content of our public website:

Time Period	Problem Gambling Content Visits	Public Website Homepage Visits
2006	47,635	72,732,217
2007	49,332	69,253,532

*\*Please note that in early 2007, the California Lottery moved the Problem Gambling Awareness "button" to a more prominent place on our homepage.*

As part of our planned public website redesign, we are looking to implement the ability to better track and update effective content, including links to external websites.



**7. How is the lottery coordinating with the Office of Problem Gambling and the coordination of the two gambling hotlines?**

The Lottery has been a part OPG's Problem Gambling Advisory Board since the inception of the Board. This participation has ensured that the Lottery's efforts have been in line with those of OPG. The dialogue between Lottery staff and OPG staff also extends outside the Board covering brochure development, website information and current events. Following the Senate Governmental Organization Committee, it became clear that the Lottery's expenditures of both staff time and resources might better be handled by OPG. This also included the visual representation of the OPG button on the Lottery's website, and the helpline number. The Lottery began the first problem gambling helpline (1-888-277-3115) in California in 1998. Subsequently, the OPG number (1-800-GAMBLER) became more widely used in the state. Earlier this summer, the Lottery began the process of changing the Problem Gambling Awareness hotline from 1-888-277-3115 to 1-800-GAMBLER. Given the widespread publication of this number on our various products, signs, terminals and brochures, we anticipate this change to take approximately one year and be completed in summer 2008. Ultimately, this number will be maintained through the interagency agreement between the Lottery and OPG.

January 15, 2008

**SENATE RULES COMMITTEE**

Don Perata, Chairman  
State Capitol Room 420  
Sacramento, CA 95814-4900

Dear Chairman Perata,

Thank you for the opportunity to discuss the State Athletic Commission and my position as a Commissioner.

The following are the answers to your questions:

**GOALS**

**What are your goals and objectives as a member of the State Athletic Commission?**

*My goal is to continue working with all branches of the State through the Commission Staff to assure compliance with law and regulation. My main priority will always be the health and safety of all our athletes in their respective disciplines. Also, as a member of the State Athletic Commission my goal is to always make sure that our licensing process and medical testing requirements are extremely effective. Working closely with the commission will ensure that we maintain our current status as the best Commission in the Nation with an utmost degree of compliance.*

**What do you hope to accomplish?**

*As Commission Chair, I intend to lead the Commission and its Staff in addressing all issues that require regulation or legislation to assure that upon the next sunset review or audit that all of the necessary processes are in place to obtain maximum efficiency, optimal outcomes and continued success.*

*The licensing process is a very crucial component for governing combative sports because this is where everything starts. The licensing process impacts integrity and health issues; therefore my plan is to work closely with the staff and fellow commissioners to make certain that all our processes are in place and they all have a great deal of integrity*

*I also hope that the athletics commissioners are consistent in our decision making process and do the right thing at all times, thus boxers, kick boxers' and martial arts fighters' safety and public confidence are never comprised. By doing this we will promote the public confidence and trust in the regulatory process and the conduct of all regulated events.*

*Upon accomplishing our goals and objectives one can look back and clearly see that the past practices and issues that led to the sunseting of the Commission are gone and that we can continue to enjoy a professional and prosperous operation overall.*

**Senate Rules Committee**

JAN 25 2008

**Appointments**

**How will you measure success?**

*Through continued monitoring of operations we will document the rising present successes of the Commission and disseminate the information through public meetings. With this process we will also be able to identify ways for continued improvement.*

**PENSION FUND**

**What is the Commission doing to reduce the pension fund's operating expenses?**

*Utilizing funds strictly for pension related issues.*

**How many boxers have vested in the fund to date?**

*Up to the present available data, 51 boxers are covered.*

**What is the average balance?**

*The average balance is \$4,641.*

**What is the condition of the fund presently?**

*The fund is strong. It is projected to increase as follows:*

*FY 07/08, \$337K to FY 08/09 \$404K*

*FY 08/09 \$404K to FY 09/10 \$470K*

*FY 09/10 \$470K to FY 10/11, \$535K.*

*The fund revenue has increased as follows:*

*FY 04/05, \$49K to FY 05/06, \$81K*

*FY 05/06, \$81K to FY 06/07, \$107K*

*FY 07/08 is not completely available.*

**Do you believe the pension fund should be continued and, if so, should it be extended to other athletes regulated by the commission?**

*Yes. However, we should continue to closely analyze the fund's progress and usefulness.*

*In regards to extending the plan to other athletes that we regulate if there were stakeholder interest and need I would ask the Executive Officer to provide statistical analysis to help the Commission determine if this is feasible.*



## **ENFORCEMENT**

**Have you received training on enforcement standards, including evidentiary rules regarding drug tests?**

*Yes, through the Attorney General assigned to the Commission and its Legal team and by way of reviewing appeals.*

**What factors do you take into account when deciding on final sanctions?**

*The actual facts and if the licensee has any proof of their innocence.*

**Is this decision making process uniform for all parties that come before the commission?**

*Each Commissioner is an individual and they make their own decisions.*

**Has the commission seen an increase in positive drug tests?**

*Yes Over the past several months the commission has seen an increase in positive drug test.*

**How do you think the commission should act to reduce drug usage by athletes?**

*Through its continued outreach efforts with a great deal of education and by making a statement that we want as drug free an environment and level playing field as possible. Also, by handing out consistent, fair, and firm discipline to violators.*

**Do you think the commission should increase testing rates to act as a greater deterrent?**

*Yes. I do believe that the commission should increase testing rates and this would indeed act as a deterrent to our athletes. The increased frequency in testing would send the message that as commissioners we take the usage of drugs by athletes very seriously.*

## **HEALTH QUESTIONNAIRE**

(2) The physician shall determine whether the contestant may have any knowledge, manifestations, symptoms, or prior history of a physical condition that may affect the contestant's ability to perform or present a potential threat to the contestant's health as a result of competing in the contest or match. The contestant shall complete a questionnaire developed by the commission. The contestant shall be asked to disclose on the questionnaire any conditions of which the contestant is aware, including, but not limited to, any of the following:

(A) Significant weight gain or loss and any change in weight in the seven days prior to the contest.

(B) Neuromuscular condition, including peripheral nerves, muscle problems, and brain problems.

(C) Pregnancy.

(D) Bone fractures and all forms of arthritis.

(E) Any condition related to vision or changes in hearing function.

(F) Heart condition or other cardiovascular condition.

(G) Pulmonary or respiratory condition.

(H) Renal or urological condition.



(I) Hematological condition, including manifestations of any unusual bleeding or bruising.

**Has this questionnaire been developed and are all contestants now required to affirmatively disclose the above physical conditions on the questionnaire?**

*Yes. The questionnaire was developed and implemented for all contestants.*

*I have been informed that it was modified in January 2008 to include (C) Pregnancy, and comply with the letter of the law in Business and Professions Code 18711.*

*The Commission has also used a pregnancy advisory form for many years that complements the questionnaire by informing the contestant of the potential dangers of competing while pregnant.*

**Does the questionnaire ask all contestants whether any of these conditions exist for that candidate?**

*Yes. The questionnaire is very concise and clear to all of the contestants.*

#### **SECTION 18706**

On and after January 1, 2008, all professional athletes licensed under this chapter shall be required by the commission to complete a medical examination process, which shall include the completion of specific medical examinations, to be determined by the commission through regulations, as a condition of initial licensure and license renewal. This medical examination process may include examinations required under current law and any additional medical examinations determined to be medically necessary. In adopting the medical examination process, the commission shall consider the health and safety of contestants, the medical necessity of any examinations required, and the financial aspects of requiring those medical examinations.

**What is the status of the promulgation of those regulations?**

*This language is reference 18711 and not 18706.*

*A regulations package related to SB 247 will be discussed at the February 2008 meeting.*

Sincerely,



✓ June M. Collison  
Chairperson  
State Athletic Commission

California State Athletic Commission: Response to Senate Rules Committee  
From: Christopher C. Giza

1. What are your goals and objectives as a member of the State Athletic Commission?

What do you hope to accomplish? How will you measure your success?

Overall, my goal is to oversee fair and safe competition in combatant sports in the state of California. I plan to use my medical expertise in traumatic brain injury and sports concussion to guide the CSAC to improved health and safety standards and monitoring of athletes. One important aspect of making lasting improvements would be to establish an active database of sport-related medical information that can then be used prospectively to monitor the success of the Commission with regards to these health and safety matters.

2. What is the commission doing to reduce the pension fund's operating expenses?

It is my understanding that the commission only uses fund money for administrative expenses related to the pension fund itself. The Commission has created a pension subcommittee that is currently evaluating the fund data and reporting back to the entire Commission at our regular meetings.

3. How many boxers have vested in the fund to date? What is the average balance?

Currently 51 boxers are covered by the fund. However, funds are not distributed until the individual meets criteria for vesting. The average balance is \$4641 (range \$1800-15,500).

4. What is the condition of the fund presently? Do you believe the pension fund should be continued and, if so, should it be extended to other athletes regulated by the commission?

Fund revenue is reportedly increasing each year from FY04/05 up to 06/07 (from \$49K to 107K). Data from FY 07/08 is not yet available. The fund balance is projected by the CSAC office to increase from \$337K to \$535K by the year 2011.

It is reasonable for there to be a pension to help provide for these athletes when their fighting careers have concluded. As all fighters contribute to the fund, it is fair that all should have the opportunity to benefit from it. However, standards for vesting may need to be specified for mixed martial arts athletes as the nature of this sport is distinct from boxing in terms of fights/year, rounds fought, and perhaps even duration of career. This may require additional evaluation and regulation by the Commission.

5. Have you received training on enforcement standards, including evidentiary rules regarding drug tests?

We have received some training on this, and I have sought additional education on these matters on my own time. I believe additional training would probably help the Commission.

6. What factors do you take into account when deciding on final sanctions? Is this decision-making process uniform for all parties that come before the commission?

Senate Rules Committee

JAN 23 2008

Appointments

In general, I consider that a positive test represents a violation of the regulations and that the appellant must provide convincing evidence that the test result is in error or that there is a substantial mitigating set of circumstances. I strive to be uniform in my decision-making.

7. Has the commission seen an increase in positive drug tests? How do you think the commission should act to reduce drug usage by athletes? Do you think the commission should increase testing rates to act as a greater deterrent?

Prior to April 2007, the Commission did not perform routine drug testing. So certainly we are dealing with more positive tests than before. It is not clear whether this is an actual trend in the sport or more likely just increased detection due to better surveillance. I believe the Commission can reduce drug usage through both education of athletes, promoters and trainers, as well as by consistent enforcement of the regulations. I think these actions, more than increased testing rates, would act as a greater deterrent.

8. Has this [health] questionnaire been developed and are all contestants now required to affirmatively disclose the above physical conditions on the questionnaire? Does the questionnaire ask all contestants whether any of the conditions exist for that candidate?

The health questionnaire was developed and implemented after the passage of SB 247. It was modified in January 2008 to include Pregnancy, and comply with the regulations as set forth in SB 247.

9. What is the status of the promulgation of those [medical examination] regulations? It is my understanding that a regulations package related to SB 247 will be agendaized for our upcoming February 2008 meeting.



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APPOINTMENTS DIRECTOR

SENATE RULES COMMITTEE

DON PERATA  
CHAIRMAN

January 8, 2008

Peter M. Lopez

Dear Mr. Lopez:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of California State Athletic Commission on Wednesday, February 6, 2008. You are not required to appear.

We have prepared the following questions to which we would appreciate your written responses. Please provide your responses by January 24, 2008.

We would also like to receive an updated Form 700, Statement of Economic Interest, by January 24<sup>th</sup>.

**Goals**

1. *What are your goals and objectives as a member of the State Athletic Commission? What do you hope to accomplish? How will you measure your success?*

**Pension Fund**

The State Athletic Commission was created in 1924 and is charged with protecting the health and safety of boxers, kickboxers and martial arts fighters. The commission currently regulates approximately 3,700 licensees; 1,200 of these are athletes, and the others are promoters, trainers, and others involved in the sports.



The commission administers the Professional Boxers' Pension Fund, which has been the subject of much criticism since its inception in 1996. A 2000 review by the Joint Legislative Sunset Review Committee expressed concerns about the fund's operations, and in 2005 the California state auditor echoed these concerns, questioning further whether a pension fund is necessary at all. The auditor noted that from 2001 to 2004 total benefits paid to boxers were \$36,000, while administrative costs were six times greater. Further, the auditor noted that as of 2003 only 14 percent of licensed boxers were vested, and their account balances were small.

SB 247 (Perata), Chapter 465, Statutes of 2006, requires the commission to report on the condition of the Boxers' Pension Fund to the Governor and Legislature by July 30, 2010. This report shall contain, among other things, a recommendation on whether the fund should be continued and, if so, whether it should be expanded to benefit all the athletes regulated by the commission.

2. *What is the commission doing to reduce the pension fund's operating expenses?*
3. *How many boxers have vested in the fund to date? What is the average balance?*
4. *What is the condition of the fund presently? Do you believe the pension fund should be continued and, if so, should it be extended to other athletes regulated by the commission?*

## **Enforcement**

The State Athletic Commission has come under scrutiny in recent hearings for inconsistent enforcement decisions. The *Los Angeles Times* chronicled the recent October 31 commission meeting at which two boxers facing similar charges for comparable offenses received different sanctions. At the same hearing, another mixed martial arts fighter had his sentence reduced by half after hiring a private attorney and submitting four extra drug tests, three of which were alleged to have been obtained under questionable circumstances, and a fourth that was analyzed by a lab not on the commission's approved list.

5. *Have you received training on enforcement standards, including evidentiary rules regarding drug tests?*
6. *What factors do you take into account when deciding on final sanctions? Is this decisionmaking process uniform for all parties that come before the commission?*
7. *Has the commission seen an increase in positive drug tests? How do you think the commission should act to reduce drug usage by athletes? Do you think the commission should increase testing rates to act as a greater deterrent?*

## Health Questionnaire

SB 247 (Perata) amended Section 18706 of the Business and Professions Code to require that the Commission develop a health questionnaire which will be provided to all contestants.

*"The contestant shall complete a questionnaire developed by the commission. The contestant shall be asked to disclose on the questionnaire any conditions of which the contestant is aware, including, but not limited to, any of the following:*

- (A) Significant weight gain or loss and any change in weight in the seven days prior to the contest.*
- (B) Neuromuscular condition, including peripheral nerves, muscle problems, and brain problems.*
- (C) Pregnancy.*
- (D) Bone fractures and all forms of arthritis.*
- (E) Any condition related to vision or changes in hearing function.*
- (F) Heart condition or other cardiovascular condition.*
- (G) Pulmonary or respiratory condition.*
- (H) Renal or urological condition.*
- (I) Hematological condition, including manifestations of any unusual bleeding or bruising."*

8. *Has this questionnaire been developed and are all contestants now required to affirmatively disclose the above physical conditions on the questionnaire? Does the questionnaire ask all contestants whether any of these conditions exist for that candidate?*

Section 18706 also provides that, "On and after January 1, 2008, all professional athletes licensed under this chapter shall be required by the commission to complete a medical examination process, which shall include the completion of specific medical examinations, to be determined by the commission through regulations, as a condition of initial licensure and license renewal."

9. *What is the status of the promulgation of those regulations?*

Peter M. Lopez  
January 8, 2008  
Page 4

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments  
Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,



DON PERATA

DP:SH

cc: California State Athletic Commission

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**PETER M. LOPEZ, ESQ.**

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**E-MAIL peter@klck.com**

OUR FILE NO: 999-001  
DOC. NO.: 01232008

January 23, 2008

**VIA FEDERAL EXPRESS**

Senate Rules Committee  
State Capitol  
Room 420  
Sacramento, CA 95814  
Attn : Don Perata

**Re: Responses to questions from Senate Rules Committee**

Dear Don:

I have prepared the following written responses to the questions addressed in your letter dated January 8, 2008. I have also attached an updated Form 700, Statement of Economic Interest.

**Goals**

1. My goal as a member of the State Athletic Commission is to do everything possible to ensure the health and safety of boxers and other combatants in mixed martial arts, as well as to do everything possible to ensure that all events are well handled, in terms of refereeing, safety of boxers and public interest of consumers attending the events.

Success can be measured by ensuring that boxers are adequately supervised and that new initiatives are put into place to maximize safety and fairness of all boxing events.

**Pension Fund**

2. Operating expenses are being minimized by utilizing the fund income solely for pension plan issues.

3. I am advised that 51 boxers are presently covered and their participation is subject to vesting criteria. The average balance of the fund I am advised is \$4,641.

4. The fund is in good condition and has been projected to increase as follows:

Senate Rules Committee



FY 07/08, \$337K to FY 08/09, \$404K to FY 09/10, \$470K to FY 10/11, \$535K

It is my belief that the pension fund should be continued to help boxers in later years after their retirement. I also believe that it would be appropriate to cover other athletes subjects to commission oversight, such as mixed martial art athletes, although the criteria applied to them should be examined carefully due to the limited number of rounds mixed martial art fighters participate in and their relatively shorter duration as participants in this athletic activity as compared to boxers who tend to have longer careers.

### **Enforcement**

5. I have not had formal training on enforcement standards but have had the opportunity to learn about drug testing standards and methodology of drug testing in connection with cases that have been brought before the commission in recent months.

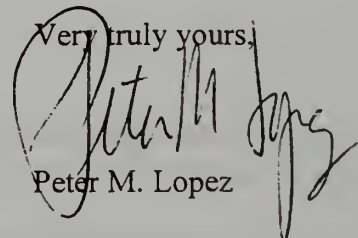
6. In evaluating sanctions, I look to all evidence which is presented in the case, prior history of the boxer in terms of any previous positive drug tests and the credibility of evidence and the boxer that is presented to the commission. I attempt to make the decision making process as uniform as possible so that sanctions imposed will be, in broad terms, consistent with other previous decisions and sanctions imposed on boxers that have come before the commission in the past.

7. The commission has seen an increase in positive drug tests and the belief that the commission, among other things, should increase testing rates to act as a greater deterrent, and in general increase public awareness of strong sanctions that will be imposed in the event of positive drug testing.

### **Health Questionnaire**

8. The questionnaire has been developed and all contestants are required to answer and disclose physical conditions which are the subject of the questionnaire. The questionnaire was modified in January of this year to include pregnancy. If the contestant refuses to answer the pregnancy question, this is grounds for immediate disqualification and an indefinite suspension. The questionnaire does ask all contestants whether any of the above conditions apply for that candidate.

9. A package related to these regulations will be on the agenda for the upcoming February 2008 meeting in Sacramento.

Very truly yours,  
  
Peter M. Lopez

## Timothy J. Noonan

January 22, 2008

Ms. Nettie Sabelhaus  
Rules Committee Appointments Director  
Room 420  
State Capitol  
Sacramento, CA 95814

**Senate Rules Committee**

JAN 25 2008

Dear Ms. Sabelhaus:

**Appointments**

In response to Mr. Don Perata's letter of January 8, 2008, below are my written responses to the questions he outlined:

### GOALS

1. **What are your goals and objectives as a member of the State Athletic Commission?**

*My goals are to improve and expand the system of safety precautions which protect the welfare of professional boxers and mixed martial artists. I, also, wish to assist State boxing commissions to provide proper oversight for the professional boxing industry in the United States. As a Commissioner, I am committed to maintaining full control over the administration of each event, thus ensuring the protection of the athletes and consumers who pay to attend these sporting events. I am also committed to seeing that the Boxers' Pension is fiscally sound and that they receive their earned benefits.*

### PENSION FUND

1. **What is the Commission doing to reduce the pension fund's operating expenses?**

*Operating expenses will be strictly monitored and enforced to ensure that the utilization of these funds is minimal. In fact, I was appointed by the Chairperson to assess the current plans administration. To this end, I am now reviewing the efficacy of the investment policy plan, benefit administration, and legal expenses associated with same. My years of experience as a CEO of a large corporation, coupled with my tenure in leading the Finance Committee for a large non-profit, give me a unique qualification in this regard.*

2. **How many boxers have vested in the fund to date?**

*Recent data indicates that 51 boxers are currently vested.*

3. **What is the average balance?**

*The average balance is \$4,641 per boxer. The fund's balance as of 12/31/06 was \$4,557,529.02 (last available Annual Pension Report).*

4. **What is the condition of the fund presently?**

*The fund is strong, with annual fiscal year end projection increases as follows:*

2007/2008: \$337,000

2008/2009: \$404,000

2009/2010: \$470,000

2010/2011: \$535,000

5. **Do you believe the pension fund should be continued and, if so, should it be extended to other athletes regulated by the commission?**

*Yes, I believe the Pension Fund should be continued. However, the plan needs to be refined to better account for the vesting needs of the boxers and for the distribution of their benefits. The Commission should also consider the extension of benefits to Mixed Martial Artists, but to do so would require discussions with the stakeholders, as vesting requirements would need to be different for these fighters.*

## **ENFORCEMENT**

1. **Have you received training on enforcement standards, including evidentiary rules regarding drug tests?**

*The Statutes and Regulations do not provide for any evidentiary information. However, the Deputy Attorney General, who handles enforcement for the Commission, provided an overview of what we (the Commission) should consider when presented with appeals and the evidence before us.*

2. **What factors do you take into account when deciding on final sanctions?**

*The evidence and testimony presented by both the State and Licensee.*

3. **Is this decision making process uniform for all parties that come before the commission?**

*I, obviously, cannot speak for other members of the Commission, however, my decision making process is uniform.*

4. **Has the commission seen an increase in positive drug tests?**

*The Commission only learns about positive drug tests when a Licensee files an appeal to be heard before the Commission. The Commission has not been presented with any year-over-year statistics regarding the percentage of fighters/boxers who have tested positive for drugs.*

5. **How do you think the commission should act to reduce drug usage by athletes?**

*This is a very important issue for the Commission. I believe the solution starts with the education of the Licensees, and how drug use can have an affect on injuries to themselves and others. I think the Commission should absolutely do everything within its power to monitor and regulate drug usage by athletes to ensure the purity and integrity of the sport remains in tact. For those who violate the rules, the penalties need to be significant for first time offenders, and punitive for repeat offenders.*

6. **Do you think the commission should increase testing rates to act as a greater deterrent?**

*The Commission currently tests both pre-fight and post-fight, and I am of the opinion that these are the critical times for testing. However, I do believe the drug tests need to continue to be updated and improved in order to eliminate the possibility of false positive readings, as well as to identify those abusers who may attempt to mask results.*

## **HEALTH QUESTIONNAIRE**

(2) The physician shall determine whether the contestant may have any knowledge, manifestations, symptoms, or prior history of a physical condition that may affect the contestant's ability to perform or present a potential threat to the contestant's health as a result of competing in the contest or match.



The contestant shall complete a questionnaire developed by the commission. The contestant shall be asked to disclose on the questionnaire any conditions of which the contestant is aware, including, but not limited to, any of the following:

- (A) Significant weight gain or loss and any change in weight in the seven days prior to the contest.
- (B) Neuromuscular condition, including peripheral nerves, muscle problems, and brain problems.
- (C) Pregnancy.
- (D) Bone fractures and all forms of arthritis.
- (E) Any condition related to vision or changes in hearing function.
- (F) Heart condition or other cardiovascular condition.
- (G) Pulmonary or respiratory condition.
- (H) Renal or urological condition.
- (I) Hematological condition, including manifestations of any unusual bleeding or bruising.

1. **Has this questionnaire been developed and are all contestants now required to affirmatively disclose the above physical conditions on the questionnaire?**

*Yes. The questionnaire was developed and implemented for all contestants after the passing of SB247. However, the questionnaire was just revised (January 2008) to include a question directed at pregnancy. Please note, the Athletic Commission Staff Counsel advised me that the questionnaire had not previously addressed the pregnancy question following SB247. I have since been informed by the Commission's Staff that it was revised during the first week in January 2008.*

2. **Does the questionnaire ask all contestants whether any of these conditions exist for that candidate? Yes.**

#### SECTION 18706

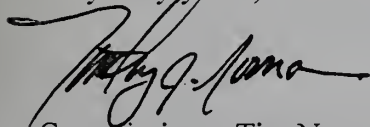
On and after January 1, 2008, all professional athletes licensed under this chapter shall be required by the commission to complete a medical examination process, which shall include the completion of specific medical examinations, to be determined by the commission through regulations, as a condition of initial licensure and license renewal. This medical examination process may include examinations required under current law and any additional medical examinations determined to be medically necessary. In adopting the medical examination process, the commission shall consider the health and safety of contestants, the medical necessity of any examinations required, and the financial aspects of requiring those medical examinations.

1. **What is the status of the promulgation of those regulations?**

*The proposed regulations will go before the Commission for approval at its next regularly scheduled meeting on February 5, 2008.*

I trust the aforementioned satisfactorily answers your questions. Should you have any questions, please do not hesitate to call me at 213-689-0508 or 310-995-1800.

Very truly yours,



Commissioner Tim Noonan  
California State Athletic Commission



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From The Desk Of  
**Mario Rodriguez**

January 16, 2008

Nettie Sabelhaus  
Rules Committee Appointments Director  
Room 420  
State Capitol  
Sacramento, CA 95814

**Senate Rules Committee**

JAN 25 2008

**RE: California State Athletic Commission**

**Appointments**

Dear Nettie,

I am receipt of your letter dated January 8, 2008 requesting answers to series of specific questions. Below are my responses:

**Goals**

1. What area your goals and objectives as a member of the State Athletic Commission?  
*To maintain the integrity of boxing and ultimate fighting, as well as organizing and bringing larger attraction fights to the state of California.*
2. What do you hope to accomplish?  
*I would like to implement ways of strictly enforcing the drug testing regulations, and being fair and consistent with the fighters. I would like to be able to work with the promoters in mutually beneficial ways that create positive momentum for them, as well as the commission.*
3. How will you measure success?  
*By having fewer athletes testing positive for drug use, and by seeing bigger, and more, fights in California. Also, by having the California Athletic Commission be the model commission in the country.*

**Pension Funds**

1. What is the Commission doing to reduce the pension fund's operating expenses?  
*The Commission only uses fund money for administrative use. It strictly utilizes funds only for pension issues.*
2. How many boxers have vested in the fund to date?  
*Up to the present available date, 51 boxers are covered. This does not mean that funds can be distributed, as one must meet vesting criteria prior to receiving funds.*
3. What is the average balance?  
*The low balance is \$1,800. The high balance is \$15,500 and the average is \$4,641.*
4. What is the condition of the fund presently?  
*The fund is strong. It is projected to increase as follows:  
FY 07/08, \$337K to FY08/08, \$404K to FY 09/10, \$470K to FY 10/11, \$535K.*

*The fund revenue has increased as follows:*

*FY 04/05, \$49K to FY 05/06, \$81K to FY 06/07, \$107K*

*FY 07/08 is not completely available.*

5. Do you believe the pension fund should be continued and, if so, should it be extended to other athletes regulated by the commission?

*My recommendation would be to create regulations and separate vesting criteria for martial arts athletes. The current criteria should not be applied to them as they do not compete in the same number of rounds, as often and generally do not have the same tenure in their sport as boxers.*

### **Enforcement**

1. Have you received training on enforcement standards, including evidentiary rules regarding drug tests?

*Yes, I have received training on enforcement standards, including the evidentiary rules regarding drug testing.*

2. What factors do you take into account when deciding on final sanctions?

*Determining whether or not the athlete has had any previous problems before and what they have tested positive for; the evidence that is presented by the athlete in disputing the results; and making sure that the lab results are accurate, complete, and fair.*

3. Is this decision making process uniform for all parties that come before the commission?

*Yes, the decision making process is uniform for all parties that come before the commission.*

4. Has the commission seen an increase in positive drug tests?

*Yes, the commission has seen an increase in positive drug tests.*

5. Do you think the commission should increase testing rates to act as a greater deterrent?

*Yes, I believe the commission should institute an increase in testing in order to act as a future deterrent.*

### **Health Questionnaire**

1. Has this questionnaire been developed and are all contestants now required to affirmatively disclose the above physical conditions on the questionnaire?

*The questionnaire was developed and implemented for contestants (all) after the passing of SB 247. It was modified in January 2008 to include (C) pregnancy, and comply with the letter of the law in Business and Professions Code 18711 that was modified by SB 247. The modification asks the following question:*

*Are you pregnant? Yes or No. If yes, please give date the pregnancy was confirmed and refer to the Pregnancy Advisory Notice.*

*The language in 18711 orders the contestant to answer the question and disclose if they know they are pregnant. A refusal to answer the questions is grounds for immediate disqualification from competition and an indefinite suspension per ARTICLE 11, ENFORCEMENT 390, Violations Of Laws Or Rules.*

*The 2007 form did not ask this question. However, the Commission has been utilizing its pregnancy advisory form (females only) that informs the contestants of several issues related to competing in combative sports while pregnant to include its dangers. We consider the advisory as something akin to an addendum to the questionnaire and it is used in every occasion for female athletes.*

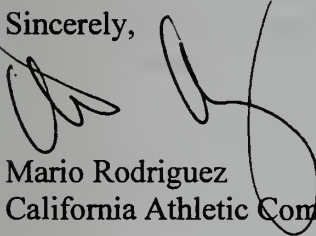
*Personally, I believe that this is a more effective method to promote healthy and safety while still considering the relevant privacy issues. I am concerned that this mandate may present controversy for the Commission. For example, what if a female refuses to answer the pregnancy question at a weigh in? She is disqualified from the event. There will be media attention, etc. This can be easily avoided by using the present effective method that is already a long accepted practice with the Commission.*

*Respectfully, the previous method of using the advisory form was a more effective and discreet manner of dealing with this sensitive issue. Nevertheless, the modification was made as ordered.*

2. Does the questionnaire ask all contestants whether any of these conditions exist for that candidate?  
*Yes, the questionnaire asks all contestants whether these conditions are pre-existing.*
3. What is the status of the promulgation of those regulations?  
*A regulations package related to SB 247 will be agenized for the February 2008 meeting.*

If you have any further questions, or need any further information from me, please do not hesitate to contact me at your earliest convenience.

Sincerely,



Mario Rodriguez  
California Athletic Commissioner





- 1. What are your goals and objectives as a member of the State Park and Recreation Commission? What do you hope to accomplish during your term? How will you measure your success?**

As a fifth generation Californian, I feel it is a privilege to be able to help preserve my California heritage so that future generations will be able to enjoy the beauty, diversity and abundance of this great state.

Today California is at a crossroad; its population is rapidly expanding while its open lands are decreasing at an alarming rate. It is essential that we preserve open space while giving an ever expanding population a place where they can have the opportunity to experience the solace of nature, the lessons of history and the beauty of the parks. What better place to enjoy the many different types of recreation that parks offer. It is my goal to make every effort to see that all of our State Parks are preserved and protected and operated as economically and efficiently as possible. It is important that the people of California are made aware of the many opportunities our parks have to offer and come to know and enjoy them as I have.

- 2. What were your most significant accomplishments during your previous term as a member of the State Park and Recreation Commission?**

I feel that most significant accomplishments during my term were the following:

- A. Helping to create general plans for parks to guide and direct their future development and insure that this is done in a timely and responsible manner.
- B. Helping people to be aware of the fact that there may be money available for park expansion and encouraging them to seek funding through Parks and Recreation. Specifically, I worked with Potrero del Sol Community Park in San Francisco and Bret Harte Community Sports Park in Angels Camp. In both cases they applied for and were able to obtain funding and have since successfully expanded their Community Parks.
- C. Helping to rewrite and update the general Recreation Plan for the State. In it we give direction for addressing the current recreation needs of Californians, considering the entire range of recreation and needs of park providers.
- D. Working toward re-establishing a link between the Department of Parks and Recreation, the Travel and Tourism Commission and the Department of Food and Agriculture. I am serving on a Parks and Recreation Tourism Sub Committee to help establish the link with tourism.

Senate Rules Committee

- 3. While you were not on the commission at the time, what is your understanding of why it will take over a year for the commission to determine if it has legal authority to act on the project? Has your legal counsel given a preliminary opinion as to your authority? Does your legal counsel's opinion differ from that of the Department of Parks and Recreation?**

As stated in your question, I was not a Commission member at the time of the Powerlink hearing in Anza-Borrego on February 8<sup>th</sup>, 2007. I did attend that meeting. I believe that there was an incorrect interpretation of Chairman Shriver's comments regarding Parks and Rec's legal authority to take action related to the Sunrise Powerlink project. The comment refers to the fact that it would take the California P.U.C. commission approximately a year to take such action. As part of that action the P.U.C. commission will determine whether or not the State Park Commission is a responsible agency pursuant to the C.E.Q.A. act, giving it authority to act on the project.

- 4. Please provide a few examples of the general policies the commission has developed for the director during your time on the commission.**

First of all, I want to state that I believe Director Ruth Coleman has been doing an excellent job and that it is a privilege to work with her. The primary policy we have established is the State Recreation policy that guides all of California's recreation providers in meeting the recreation needs of all our citizens and speaks to the multitude of recreational opportunities available through the State Park System. In other matters the Commission has followed the established policies regarding operating contracts, advertising contracts, financial management and economic cooperation as well policies regarding resource management, planning, acquisition and development and park operations.

- 5. How has the commission recommended that the issue of deferred maintenance be addressed? Has it communicated its position to the governor's office?**

Addressing the issue of deferred maintenance:

- A. Use available monies for the highest priority need e.g. health and safety issues, and repairing and restoring damage caused by natural disasters.
- B. Forming partnerships that can either reduce costs or generate revenues on parks projects.

Dear Nettie Sabelhaus ,

Per our conversation yesterday, here are my responses. In the essence of time and for clarity, I typed the responses directly under the each question.

Again, I apologize for any confusion with my address and contact information. The address the Senate Rules Committee has is over three years old. We updated my contact information when my resume was requested back in 2007. The address below is my office address and I receive all my board mail at the same address. Also for your records (and as it reads on my resume) my cell phone is: 415.577.6021 and my office line is: 415.355.1734x11, email: [deedee@sanfranciscoinstitute.com](mailto:deedee@sanfranciscoinstitute.com).

Thank you.

Deedee K. Carlson



November 28, 2007

Deedee K. Carlson

Dear Ms. Carlson:

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the Board of Barbering and Cosmetology on Wednesday, January 9, 2008. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by December 17, 2007. We would also like to receive an updated Form 700, Statement of Economic Interest, by December 17<sup>th</sup>.

#### Goals

1. *What are your goals and objectives as a member of the Board of Barbering and Cosmetology? What do you hope to accomplish? How should we measure your success?*

**As a Board we hope to maintain impeccably high standards of health and safety for our consumers, fair enforcement and quality education for our licensees and economic value as an industry for California. The Board should be measured on their overall success in the previously mentioned areas.**

2. *Have you received any training from the Department of Consumer Affairs to prepare you for your responsibilities? Have you received any ethics or conflict of interest training?*

Senate Rules Committee

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**Yes, I attended a one-day New Board Member Seminar in San Diego a couple months after my appointment. (2<sup>nd</sup> quarter of 2007)**

### **Board Structure**

The Board of Barbering and Cosmetology is responsible for licensing and regulating barbers, cosmetologists, electrologists, estheticians, and manicurists. In 1997 the board was sunsetted and all of its duties, functions, and powers were transitioned to the Department of Consumer Affairs. In 2003 the board was recreated, and it is now scheduled to sunset on July 1, 2008.

3. *How is the board planning for its scheduled sunset?*

**We have made significant improvements over the last two years and we feel confident that we've created a strong foundation to continue serving California Consumers and Licensees during the sunset period. If the Board becomes a Bureau or Program under the Department of Consumer Affairs we will work diligently with them as an advisory committee until at which time the Board is returned to full status. This has also been a discussion point for our board; as all goals are discussed in open meetings. The Board allows an open forum for consumers, licensees and industry professionals to discuss create and implement our on-going plan of improving our systems and dedication to California consumers.**

### **Enforcement Issues**

The 2006 Strategic Plan includes goals to enhance the efficiency of the inspection unit and enhance awareness of health and safety issues among consumers and industry. To achieve these simultaneously, the board approved, at a meeting on October 14, 2007, the implementation of a new "cite and fine" program which would create a less confrontational atmosphere between inspectors and licensees. Currently, an inspector enters a place of business and marks violations on an inspection report, which may total thousands of dollars in fines. The ultimate fine may be far less after administrative review, but the effect of the initial figure often creates unnecessary conflict between the licensee and the inspector. In order to minimize this conflict, the board is creating an inspection form that does not list fines for each violation—a final bill would instead come in the mail. The board also discussed allowing licensees to correct minor violations, such as display requirements, on the spot.

4. *Currently, licensees are inspected every five to seven years. Does the board have a plan for more frequent site visits?*

**Yes, the Board has a plan to increase the number of inspections through the addition of more inspectors. The Board currently has 16 inspectors for 45,000 licensed establishments and is in the process of requesting more**

Deedee K. Carlson  
November 28, 2007  
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**inspector positions. (Improvement will come upon the approval of more inspector positions)**

5. *Is the program on track to be operational by January 1, 2008, which is the board's stated goal?*

**Yes, the program is on track to begin January 1, 2008.**

6. *Has the board's new enforcement efforts involving surprise visits to salons proven to be successful? What are the plans for this kind of enforcement in the future?*

**The nature of our inspections are always "surprise" inspections with exception of a new school's first visit (before the school is approved to be open, there is a scheduled inspection). Random inspections take place on a daily basis according to the inspectors' territory. The Board has completed weekend "stings" and will continue to enforce the rules and regulations in an effort to protect consumers. With the increase of inspections, (due to the new cite and fine procedures) we hope to alleviate some stress from inspectors and allow them the opportunity to educate the licensees.**

The board also expressed hope that the inspector's role could evolve into more of an educational, rather than a punitive, one. While the board's mission is to ensure the health and safety of California consumers by enforcing the laws of the beauty industry, the board contemplated that less enforcement may be necessary if greater understanding and awareness is created at the front end.

7. *How will you ensure that the board's statutory mission of public protection is not overlooked with the board's emphasis on education of licensees? How is the board helping to educate licensees to facilitate compliance?*

**The new cite and fine procedure by nature will require licensees to make a positive change in order to continue within the industry. Continued education to the licensee through the schools, website, inspectors, Disciplinary Review Committee and trade shows will minimize repeat violations and decrease consumer harm. The enforcement of the laws will not be weakened by the new cite and fine procedures. Inspectors will be able to educate during inspections as opposed to trying to avoid a hostile response within the establishment.**

8. *How long does it take for the board to process consumer complaints or license approvals or renewals? Is there a backlog? If so, what is the estimate of backlogged cases, and what actions are underway to clear up the backlogs?*

**Prior to this Board, we were backlogged over 8 months. At this point, we are not back logged in any area. Complaints are processed in less than ten days, renewals in less than two weeks and applications in approximately four weeks. As a school owner and licensee, I have personally witnessed these improvements through renewing my own license and following the progress of my students through the application process.**

Deedee K. Carlson  
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9. *Has the board been subject to a departmental audit? If so, what were the results?*  
**Yes, the Board was audited in June 2006 and is currently responding to the 360-day follow-up. The Board's Executive Officer Kristy Underwood can forward the audit package upon request.**



Deedee K. Carlson  
November 28, 2007  
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## Booth Rental

One of the board's legislative goals for the next session is to require a booth rental license. Currently, a salon owner may rent out portions of the salon ("booth rental") to licensed professionals such as cosmetologists or manicurists. These individuals are not employed by the salon, but rather are independent contractors, responsible for their own workplace rules, supplies, and pricing. However, in some cases an individual may be hired as a contractor, but is in fact subject to supervision to the extent that the person is actually an employee, and is eligible for workers' compensation coverage, unemployment and disability insurance, and social security. Even if this is not the case, an actual independent contractor may not fully recognize the tax ramifications and other obligations of booth rental; the industry believes thousands of dollars go unpaid every year. The board argues that a booth rental license would aid greater understanding among the industry and consumers.

10. *In addition to a legislative approach, is the board coordinating with the Employment Development Department to ensure the proper classification of salon professionals?*

**The Board has worked with EDD in the past and has plans to renew this relationship in order to better educate licensees and consumers. Currently all schools have a curriculum that has been provided by the IRS to educate and prepare graduates for employment and contract work as it pertains to taxes and responsibilities.**

## Testing in Prisons

According to the board, fourteen inmates have taken licensing exams in correctional facilities as of September 18, 2007. Seven passed. AB 861 (Bass) Chapter 411, Statutes of 2006, helped facilitate this process, authorizing the board to issue probationary licenses to inmates, subject to specified terms and conditions. AB 861 also required the board to study the effects of current law, regulations, and policy, related to the licensing functions of the board that may create unnecessary barriers to employment.

11. *In its report to the Legislature in September 2007 on this issue, the board concluded that current laws, regulations, and policies do not create a barrier to licensure. Does the board have plans to expand its program of testing in prisons?*

**The Board has conducted two exams in State Correctional Facilities and a third exam is scheduled for the first quarter of 2008. The Board is currently working with CDC in the scheduling and administration of the exams and expanding to other programs such as Esthetics, Nails and Barbering.**

12. *Does the board have enough instructors and examiners available to support the amount of inmate interest in this licensing program? Is the passage rate similar to those individuals taking the exam outside correctional facilities?*



Deedee K. Carlson  
November 28, 2007  
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**A total of 14 exams have been administered with a 50% pass rate: currently, the pass rate for outside applicants is approximately 80%. Thus far the Board has been able to absorb the workload that is involved with conducting the examinations. At this time there is not an instructor's license, there was a certification process through the Bureau of Private Postsecondary Vocational Education. BPPVE is no longer available to certify instructors. The Board will work with the DCA on a plan for certification and/or licensing of instructors. Under the BPPVE certification, there are as many instructors available as there are licensees with a minimum of three years experience.**

Deedee K. Carlson  
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Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments  
Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

DON PERATA

DP:SH

cc: Board of Barbering and Cosmetology



JAN 11 2003

**Socorro Farias  
Board Structure**

**Appointments**

**How is the Board planning for its scheduled sunset?**

If the Board becomes a Bureau or Program under DCA, the transition will be easy to consumers, applicants and licensees because during the past two year, the Board has made improvements in their processes that will allow for this transition to be smooth. The Board has a strong foundation and all Board members are committed to continuing to work with the DCA as industry advisory committee during the time that the Board is sunset.

**Enforcement**

**Currently, licensees are inspected every five to seven years. Does the Board have a plan for more frequent site visits?**

The Board is in the process of requesting more inspector positions and an improvement cannot happen without these additional positions.

**Is the (new cite and fine) Program on track to be operational by January 1, 2008, which is the Board's stated goal?**

Yes the Board is on track to be operational by January 1, 2008.

**Has the Board's new enforcement efforts involving surprise visits to salons proven to be successful? What are the plans for this kind of enforcement in the future?**

The Board conducts random inspections and the Board hopes that with the new cite and fine procedure, this will lessen the stress on from inspectors.

**How will you ensure the Board's statutory mission of public protection is not overlooked with the board's emphasis on education of licensees? How is the Board helping to educate licensees to facilitate compliance?**

By educating licensees this will minimize repeat violations and therefore reduce consumer harm. Also, by removing the hostile environment from the inspection process, this would allow inspectors to explain the violations and how to correct them.

**How long does it take for the Board to process consumer complaints or license approvals or renewals? Is there a backlog? If so, what is the**



**estimate of backlogged cases and what actions are underway to clear up the backlogs?**

There is no backlog in any of the different areas and the complaint process is less than 10 days. Renewal processing is less than 2 weeks and application processing is approximately 4 weeks.

**Has the Board been subject to a departmental audit? If so what were the results?**

Yes, the Boards was audited in June 2006 and is currently going through the 360-day follow-up.

### **Booth Rental**

**In additional to the legislative approach, is the board coordination with the Employment Development Department to ensure the proper classification of salon professionals?**

The Board has worked with EDD in the past and is planning to renew this relationship to better educate licensees.

### **Testing in Prisons**

**In it's report to the legislature in September 2007 on this issue, the board concluded that current laws, regulations, and policies do not create a barrier to licensure. Does the Board have plans to expand its program to testing in prisons?**

The Board is working with the California Department of Corrections and Rehabilitation in the scheduling and administration of the exams. The Board has conducted two exams in State Correctional Facilities and a third one is planned for the beginning of 2008/

**Does the board have enough instructors and examiners to support the amount of inmate interest in the licensing program? I the passage rate similar to those individuals taking the exam outside correctional facilities?**

The Board has been able to handle the workload and a total of 14 exams have been administered with a passage of 50%. The pass rate for outside applicants is 80%/



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SENATOR ROY ASHBURN, Vice Chair

SENATOR GIL CEDILLO

SENATOR ROBERT DUTTON

SENATOR ALEX PADILLA

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Appointments Consultant

BILL BAILEY, Consultant to SENATOR ASHBURN

DAN SAVAGE, Consultant to SENATOR CEDILLO

CHRIS BURNS, Consultant to SENATOR DUTTON

BILL MABIE, Consultant to SENATOR PADILLA

ALSO PRESENT

J. ALFRED SMITH, SR., Member  
California Community Colleges  
Board of Governors

ASSEMBLY MEMBER SANDRE SWANSON

DR. ANGUS BROWN, Senior Pastor  
Third Baptist Church, San Francisco

ALICE HUFFMAN, President  
California NAACP

TIMOTHY A. SIMON, Member  
Public Utilities Commission

SENATOR MARK RIDLEY-THOMAS

CARL HACKNEY, Retired Colonel  
United States Army





1 SENATOR RICHARD POLANCO, Retired  
Chair, California Latino Caucus Institute

2 BOB GNAIZDA, General Counsel  
3 The Greenlining Institute

4 MEL ASSAGAI  
5 Sacramento Black Chamber of Commerce  
6 California Association of Urban League Executives  
National Association of Women Business Owners

7 C.C. YIN, Founder and Chair  
8 API American Public Affairs Association  
McDonald's Franchisee

9 ALEXANDRA ROOKER  
10 Communications Workers of America, Local 9400

11 JOSE PEREZ  
12 Latino Journal

13 FRED JORDAN, Past President  
National Black Chamber of Commerce

14 NWAMAKEI AGBO  
15 Ella Baker Center for Human Rights  
16 Green For All

17 AUBRY STONE, President and CEO  
California Black Chamber of Commerce

18 NANCY ZARENDA  
19 Sacramento Hispanic Chamber of Commerce

20 THERESA TAYLOR CARROLL  
21 Independent Attorney and Family Friend

22 INGRID MERRYWEATHER  
Small Business Owner

23 ELEANOR BOSWELL-RAINE  
24 California Black Press Association

25 JAMES BRADY, Vice Chair  
26 California Black Chamber of Commerce

27 THALIA GONZALEZ, Senior Legal Counsel  
28 The Greenlining Institute



1 WILL JOHNSON, Member  
2 Utility Market Access Partnership  
3 National Association of Regulatory Utility Commissioners

4 KEENAN DAVIS, General Counsel  
5 01 Communications

6 ROY PEREZ  
7 California Hispanic Chamber of Commerce

8 ROBERT L. HARRIS  
9 California Association of Black Lawyers  
10 Charles Houston Bar Association  
11 Oakland Branch of the NAACP

12 MATTHEW MARCUS, on behalf of  
13 DANA APPLING, Director  
14 Division of Ratepayer Advocates

15 JAMES JACK  
16 California Association of Competitive Telecommunications  
17 Companies

18 ADRIAN PEREZ, President  
19 CalMagazine.com

20 BOB JACKSON, President  
21 Pastors of Oakland Association  
22 Oakland African-American Chamber of Commerce

23 DUNCAN MCFETRIDGE  
24 California Coalition of Utility Employees

25 JIM CONRAN, President  
26 Consumers First

27 DAVE STEVENSON  
28 California Water Association

LARRY HEALD  
Oakland Citizens Committed for Urban Renewal

MARK TONEY, Executive Director  
The Utility Reform Network (TURN)

ALFONSO J. MORESI, Member  
Workers' Compensation Appeals Board





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Seismic Safety Commission: WILLIAM M.  
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Governors GEORGE O. DAVIS; Members of the  
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DELAHOUSSEY, Ed.D., California Student Aid  
Commission; Members of the Western States Water  
Council: DARLENE E. RUIZ and LESTER A. SNOW





P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: We're going to call the roll now. We're lacking a quorum, but we will begin as a subcommittee in deference to those who came on time.

Our first gubernatorial appointee appearing today is the Reverend J. Alfred Smith. Please come forward with Assembly Member Sandre Swanson, who would like to present.

ASSEMBLY MEMBER SWANSON: Mr. Chairman, Senators, it's with a great sense of honor and privilege that I'm before you today.

As a high school student who was not on the track to go to college, ended up at Laney Community College because of important mentors like the Dr. J. Alfred Smith, and went on through community college, and graduated from San Francisco State, and find myself a Member of the California State Assembly because someone believed in me. Dr. Smith is that person who believed in me as a young, aspiring person in the City of Oakland.

And it is so fortunate for the State of California for this Committee to have this person of high moral fiber and commitment to the community before you as a nominee. I think it's with a great sense of honor and privilege that I take this opportunity to introduce Dr. Smith to some, and to reintroduce to others.

He deserves your most serious consideration. I think he will be a passionate leader on behalf of children, and students, and young adults that need community college. And he

1 will also make sure the community college reaches out to help us  
2 with some pressing problems during these serious economic times  
3 and challenges with our state prisons, and the need to lower  
4 recidivism rates by retraining those that have served their  
5 time.

6 And I just think this is a wonderful opportunity,  
7 and I present to you Dr. J. Alfred Smith, my friend, my pastor,  
8 and my mentor as a young man growing up in the City of Oakland.

9 CHAIRMAN PERATA: Thank you, Sandre.

10 I'm going to do something I never do, and that  
11 is, I'm going to interject myself, because I would have been  
12 presenting you had Sandre not been here.

13 To my colleagues and everyone else here, I don't  
14 believe that there has been anything involving young people in  
15 Oakland as long as I've been politically active, which goes back  
16 a ways, where Dr. Smith has not been in the lead, either  
17 initiating the concept or supporting the concept. He is one of  
18 those individuals that doesn't have to have the idea himself.  
19 He is more than happy to support good ideas that come from  
20 anyone.

21 As recently as two weekends ago, when we in  
22 Oakland were trying to rally back from an unfortunate spate of  
23 homicides, particularly young African-American and Latino men,  
24 we decided to do a gun buy-back. We did it a little differently  
25 than anybody else has. We offered 250 bucks a gun. And we were  
26 overwhelmed by the response.

27 But typically, the good doctor offered his church  
28 as one of the sites, and we wanted to use churches because they

1 are sanctuaries. People would feel safe coming there. And we  
2 took in over 500 firearms in less than three hours at that  
3 site.

4 That's just the most recent example of the kind  
5 of leadership that Dr. Smith has provided.

6 I'm just delighted that he was willing to take  
7 this position, because certainly there are not things that he  
8 needs to do in his life. He has plenty to do.

9 He has also trained so many individuals. His  
10 deaconate at the church is just jeweled with excellent people.

11 And we are all very, very fortunate in Oakland --  
12 we are now fortunate in the State of California -- to have your  
13 service, sir. Welcome.

14 DR. SMITH: Thank you for your gracious words,  
15 Chairman Perata, and my gracious friend, Sandre Swanson.

16 To Members of the Committee, it is an honor for  
17 me to introduce myself formally. I'm J. Alfred Smith, Senior,  
18 the Senior Pastor of the Allen Temple Baptist Church, where I  
19 have served for many years, starting there in 1970, by being  
20 very involved in education. The Adult Day Schools sponsored by  
21 the Oakland public schools has met at our church. We have an  
22 ongoing tutorial program.

23 In addition to that, we this summer will have a  
24 clinic for students who need help in algebra in order to meet  
25 the entrance requirements into college.

26 We have a program dealing with recidivism,  
27 training parolees who come out of prison, helping them to find  
28 work.



1                   And so, my whole life has been one of trying to  
2 help people.

3                   I'm interested in being a member of the Community  
4 College Board because of the standards that the Community  
5 College Board has, such as creating a college awareness and  
6 consciousness, and not only that but enabling students, once  
7 they enter college, to be successful and to finish.

8                   And thirdly, to move either from the community  
9 college world into the workforce world with career technical  
10 education, or into the State University system where they can be  
11 trained professionally.

12                  And the Community College Board also has a plan  
13 where they evaluate the work of the colleges and provide funds  
14 for the continuing education of teachers so that they can do a  
15 better job with basic skills.

16                  You passed AB 194, which is designed to help  
17 community college students master basic skills. You passed SB  
18 946, which enables the community college to work with K-12  
19 students in order to have readiness for college. You've passed  
20 SB 70, CTE, Career Technical Education, and I'm all ready  
21 involved in working with that committee.

22                  And so, if I am confirmed here today, I will lend  
23 the stubborn ounces of my weight toward making this community  
24 college system not only the largest but one of the best.

25                  As I close, I want to say, you say the little  
26 good that I do will never tip the hovering scale where justice  
27 hangs in balance.

28                  I never said I thought it could, but I'm

1 prejudiced beyond debate in favor of which side shall feel the  
2 stubborn ounces of my weight.

3 CHAIRMAN PERATA: Thank you.

4 I think the other two appointees may want to just  
5 leave now.

6 [Laughter.]

7 CHAIRMAN PERATA: Thank you, Doctor.

8 Questions from members?

9 I certainly have none. Do you have any family  
10 here with you, Dr. Smith?

11 DR. SMITH: Yes. May I?

12 CHAIRMAN PERATA: Absolutely, and anyone else.

13 DR. SMITH: First of all, I'd like to introduce  
14 the Bishop of Oakland, Bishop Bob Jackson, who is also the  
15 President of Oakland Pastors, the eucumenical community there.

16 I'd like to introduce members of the Allen Temple  
17 congregation, especially some of our board members, who see to  
18 it that I measure up to their high expectations. Could you all  
19 stand.

20 [Applause.]

21 DR. SMITH: Not the least, I'd like to introduce  
22 the Reverend Bernestine Farley, the significant other in my  
23 life.

24 [Applause.]

25 CHAIRMAN PERATA: Any questions from other  
26 Members?

27 Anyone here, and I'd advise you to be really  
28 brief. We're not hanging in the balance here. These aren't the

1 scales of justice. No one has ever confused us with being the  
2 scales of justice.

3 Anyone who'd like to speak in support of the  
4 nominee?

5 DR. BROWN: I'm Dr. Angus Brown, Senior Pastor  
6 of the Third Baptist Church of San Francisco, which is the  
7 oldest African-American institution in the west, founded in  
8 1852.

9 I've know Dr. J. Alfred Smith for 32 years as a  
10 colleague, as a scholar, as a social activist, as a sharp mind,  
11 and a most eloquent speaker, as you've gathered. He is one of  
12 the best public servants to be found anywhere south of Heaven  
13 and north of Hell. He transcends race, gender, and any personal  
14 persuasions of individuals.

15 He will be a tremendous asset to this academic,  
16 intellectual training enterprise of this junior college system  
17 of the State of California.

18 He is respected around the world. He brings a  
19 world dimension to his leadership. And I have every good reason  
20 to believe that you all will do the right thing and support this  
21 man, who has universal support from his peers and from people of  
22 all walks of life.

23 CHAIRMAN PERATA: Thank you, Reverend.

24 MS. HUFFMAN: Mr. Chairman and Members of the  
25 Committee, I know when there's a win about to happen.

26 CHAIRMAN PERATA: Tell us who you are, Alice.

27 MS. HUFFMAN: Alice Huffman, President of the  
28 California NAACP, and national board member of the NAACP.

1                   And I just want to join this winning chorus and  
2 go on record, NAACP supporting one of our greatest, Reverend J.  
3 Alfred Smith.

4                   CHAIRMAN PERATA: Thank you.

5                   I'm to say something silly now. Anybody in  
6 opposition?

7                   [Laughter.]

8                   Seeing none, I'd entertain a motion.

9                   SENATOR ASHBURN: Move.

10                  CHAIRMAN PERATA: We have motion to approve.  
11 Please call the roll.

12                  SECRETARY WEBB: Cedillo.

13                  SENATOR CEDILLO: Aye.

14                  SECRETARY WEBB: Cedillo Aye. Dutton.

15                  SENATOR DUTTON: Aye.

16                  SECRETARY WEBB: Dutton Aye. Padilla.

17                  SENATOR PADILLA: Amen.

18                  [Laughter.]

19                  SECRETARY WEBB: Padilla Aye. Ashburn.

20                  SENATOR ASHBURN: Aye.

21                  SECRETARY WEBB: Ashburn Aye. Perata.

22                  CHAIRMAN PERATA: Aye.

23                  SECRETARY WEBB: Perata Aye. Five to zero.

24                  CHAIRMAN PERATA: Five-zero, congratulations.

25                  DR. SMITH: Thank you.

26                  [Applause.]

27                  CHAIRMAN PERATA: Our second appointee appearing  
28 today is Timothy Simon, a member of the PUC. There you are,



1 Tim. Sit down, please.

2 He will be introduced by a gentleman who has to  
3 get on a plane and get out of town because we're trying to  
4 promote him to a higher position of authority with the Hebrew  
5 National Sausage Company.

6 [Laughter.]

7 SENATOR RIDLEY-THOMAS: My, my, my, Mr. Chairman.

8 Mr. Chairman and Members of the Committee, I'm  
9 pleased to have this opportunity to introduce Timothy Alan Simon  
10 and ask for your favorable consideration and recommendation to  
11 the full body to serve the remainder of his six years, his  
12 six-year term, as Commissioner on the Public Utilities  
13 Commission.

14 Mr. Chairman and Members, in the year that  
15 Commissioner Simon has served on the PUC, he has distinguished  
16 himself in my view as an advocate for greater opportunities for  
17 small, disadvantaged, and minority firms seeking business with  
18 utilities and those communities that seek to be better  
19 represented in that context. This is no small matter as our  
20 state upgrades and expands its utility infrastructure and seeks  
21 development and procurement of environmentally friendly sources  
22 of energy.

23 As a regulator, Commissioner Simon recognizes, as  
24 we all do, that utilities operate in the global market, and that  
25 shareholders' value is a major driver of investment, whether in  
26 the energy or telecommunications industries. He is committed to  
27 a balanced approach, and is sensitive to the needs of persons,  
28 irrespective of their station, and of ratepayers across the

1 board, not only with respect to the bills they pay for services  
2 regulated by the Commission, but also the employment and  
3 business opportunities the regulated communities produce.

4 Commissioner Simon enjoys broad support,  
5 Mr. Chairman and Members, including that of the Legislative  
6 Black Caucus, of which I am the Chair, and on whose behalf I am  
7 here today to make this presentation of introduction. The  
8 support extends beyond ethic communities to include faith-based,  
9 civil rights, environmental, and consumer groups, and is  
10 geographically dispersed. In short, public support for  
11 Commissioner Simon's confirmation is manifested in the volume of  
12 communications received by Senate Rules Committee. And I would  
13 note that there is no known opposition -- that is, of which we  
14 are aware -- organized to protest or deny this confirmation.

15 Finally, I would like to say that in my  
16 conversations with Commissioner Simon, I'm convinced that he  
17 possesses the capacity and the ability to do the job and do it  
18 well, and do so in a manner that advances the public interest.

19 Mr. Chairman and Members of this important  
20 Committee, it is my privilege, and I take it as an important  
21 opportunity, to introduce Commissioner Simon to you and to  
22 strongly encourage your favorable disposition of the matter.  
23 And I look forward to having the opportunity to vote on this  
24 should you do so when it comes to the full body for  
25 confirmation.

26 I thank you for this opportunity, and I take an  
27 additional point of privilege, if I may, Mr. Chairman, to enter  
28 into the record communication from one of our former colleagues,

1 the Honorable Gwen Moore, who wishes to register her support by  
2 way of this written communication. And I'll leave it with the  
3 clerk for filing with the record.

4 Thank you for this opportunity, and I give now  
5 Mr. Timothy Simon.

6 CHAIRMAN PERATA: Thank you, Senator. If you  
7 need to leave, we certainly will understand.

8 I'm assuming that our other colleague back there,  
9 Senator Polanco, is here. You'll speak at appropriate time?  
10 Great. Thank you.

11 Welcome, Mr. Simon.

12 MR. SIMON: Thank you, Senator.

13 President Pro Tem Perata, and the other Senators  
14 who are here, I truly appreciate your time and the time of your  
15 staff that you've given to this effort and my effort to seek  
16 your confirmation.

17 I want to thank Governor Arnold Schwarzenegger  
18 for this great opportunity to serve the people of California as  
19 a California Public Utilities Commission.

20 I also want to thank my many friends and family  
21 members who are here today, and many of those stakeholders who  
22 have voiced or have written their support of my confirmation  
23 before this body.

24 I was born in San Francisco, California in 1955.  
25 I attended St. Michael the Archangel's School, St. Ignatius  
26 College Preparatory, the University of San Francisco, and  
27 University of California, Hastings College of the Law.

28 My practice has largely been focused in the area

1 of securities regulations. I also serve as an adjunct professor  
2 of law at Golden Gate University and formerly taught at my alma  
3 mater, Hastings College of the Law.

4 I've been largely an in-house counsel, as my  
5 record and background that you have reflect. And it was in 2005  
6 that I was honored to receive a call, in December of 2005, from  
7 Governor Arnold Schwarzenegger informing me that I would serve  
8 as the first African-American Appointments Secretary in the  
9 history of the State of California. And as we honor Black  
10 History Month, I feel very fortunate to be in that capacity.

11 It was then the decision of Governor Arnold  
12 Schwarzenegger, approximately a year later, that I serve on the  
13 Commission that Governor Hiram Johnson founded as the California  
14 Railroad Commission, a commission that is dedicated to serving  
15 the needs of the ratepayers in this state, and making sure that  
16 we have a balanced regulatory policy where utilities have the  
17 resources to provide services, and the ratepayers are not  
18 clearly overcharged for those services. I'm extremely honored  
19 to be in that capacity.

20 My view has been to maintain a balanced approach,  
21 to exercise objectivity, to listen to all sides in the adversary  
22 process to make the necessary determinations that impact the  
23 California economy. First and foremost, I want to ensure that  
24 utility rates are fair and just, that the marketplace is -- has  
25 the appropriate levels of oversight and enforcement to ensure  
26 that our ratepayers are not subject to monopolistic practices  
27 that clearly damage the California economy.

28 I am also committed to making certain that



1 low-income Californians have access to utility service. This is  
2 essential, particularly in areas like Telco, where we're  
3 witnessing a generation now -- my children are here today --  
4 where my children will probably never own a wire-line phone.  
5 So clearly, the process of making sure that wireless and other  
6 devices provide the necessary access to people that are -- that  
7 are constrained by this economy remain in place and even  
8 expand.

9 And of course as a Commissioner, I also support  
10 the notion of having economic growth and opportunity here in  
11 California, and particularly for those communities that have  
12 been historically shut out of the many economic booms that our  
13 state and country has witnessed.

14 My votes, as I mentioned, have been balanced.  
15 And I've demonstrated that I understand that we regulate the  
16 companies, and we are not necessarily participants in their  
17 actions. First and foremost, I voted to -- to fine PG&E,  
18 Pacific Gas and Electric, \$35 million of shareholder funds to  
19 refund customers who had been improperly billed on their  
20 back-billing services. This is when they went through a systems  
21 upgrade, and it was important to me that we not send a message  
22 that utilities not invest in their operating infrastructure, but  
23 at the same time to the extent that ratespayers were harmed, and  
24 particularly those that were shut off by PG&E, I clearly voted  
25 and supported the idea that their shareholders should pay for  
26 those actions.

27 I've also voted to support low-income energy  
28 efficiency programs. And this vote was designed to make sure

1 that programs are available to more customers, and to improve  
2 cost effectiveness in the energy arena. I'm proud to say that  
3 thanks to your efforts, as well as the efforts of the California  
4 Public Utilities Commission, California leads the nation in  
5 energy efficiency. Yet, I do believe that there is much more  
6 that we can accomplish in this arena.

7 I also voted for economic development rates for  
8 small businesses, a vote that was designed to make sure that we  
9 keep businesses in California, and that we do not allow utility  
10 rates to drive out those businesses that provide the jobs to the  
11 very constituents that we serve.

12 I voted to fine AT&T and Cingular \$12.14 million  
13 for unfair and misleading business practices involving the wire  
14 line businesses that they had inherited through merger and  
15 acquisitions, but yet, be that as it may, someone had to pay,  
16 and I voted in favor of those particular fines.

17 I also voted and actually as the assigned  
18 Commissioner to initiate a rule making to address standards for  
19 telecommunication backup and power systems, which we call  
20 emergency notifications under Assembly Bill 2393, authored by  
21 Assembly Chair Lloyd Levine.

22 But there's something more important than simply  
23 my vote on this Commission. It's the role that I'm able to  
24 play, either by exercising the bully pulpit or the policies that  
25 impact California. I sponsored the first California Public  
26 Utilities Commission Financial Services Forum. This forum was  
27 specifically designed to honor the traditions set by  
28 Assemblywoman Gwen Moore in General Order 156 by encouraging

1 utilities to open up their financial service procurements to  
2 disabled veterans, women, minorities, and other businesses that  
3 have typically not been a part of the procurement process of our  
4 utilities.

5 Let me make it very clear, that I think our  
6 utilities have made an effort to engage these businesses, but I  
7 felt the area of financial services had not received the  
8 appropriate attention.

9 We'll be holding another seminar of this nature  
10 on March 20th in Los Angeles, California. The last was held in  
11 November in San Francisco, which was specifically on the area of  
12 corporate debt underwriting. The seminar that'll be held in Los  
13 Angeles is to open up the doors of investment management and  
14 liquidity management to minorities, and women, and disabled  
15 veteran-owned firms.

16 I've also, as many of you know from reading this  
17 morning's Los Angeles Times, was the visionary and promoter of  
18 the Advancing the New Energy Economy in California. This summit  
19 was held in San Francisco, California and had a diverse  
20 participation of over 800 people, many from community and faith-  
21 based organizations.

22 My -- my objective was very clear. As a  
23 regulator, as a utilities regulator, I attend environmental  
24 conferences all the time, but unfortunately, they're typically  
25 predominated by white male investors and renewable energy  
26 developers. My interest was to open this marketplace so that we  
27 can ensure that the new green economy that this Legislature has  
28 promoted and made possible are opportunities that will impact

1 and engage the Latino and African-American communities, many  
2 young people in underserved communities who do not see  
3 themselves matriculating in the mainstream economy of this great  
4 country.

5 So, this summit was specifically designed to  
6 bring together academics, investors, workforce investment  
7 specialists. We were honored to have the Treasurer of the  
8 State of California and the Attorney General, as well as Mayor  
9 Gavin Newsom, as speakers, former -- he's not former Governor --  
10 but former Treasurer and gubernatorial candidate Phil Angelides,  
11 now Chairman of the Apollo Alliance, actually chaired a  
12 committee in this process.

13 And I think those who participated clearly  
14 recognized that this -- this was designed to open the markets to  
15 those communities that were not a part of the digital boom, were  
16 not a part of the nano tech boom, were not a part of the biotech  
17 boom, and to make sure that this new green gold rush engages all  
18 Californians.

19 I've also held AB 2393 workshops throughout the  
20 state, the last being in San Diego, California. One was held in  
21 San Francisco, and we're planning one in the Inland Empire. And  
22 this was specifically to hear testimony and to review the  
23 ability of our first responders in the State of California,  
24 those that are assigned the task of emergency notifications, to  
25 make sure that they have sufficient backup, as provided by the  
26 telecommunication companies, and that the neighboring counties  
27 and other jurisdictions have the ability to communicate to each  
28 other, a problem that California still faces.



1 I've also sponsored a round table with the  
2 utilities, involving the issue of customer deposits. Many  
3 economically challenged utility customers are forced to put up  
4 customer deposits, sometimes totaling a two-month utility bill,  
5 that's held by the utility in some cases for a year. This round  
6 table was designed to bring the utilities together to discuss  
7 ways that we can put the -- take the pressure off of the  
8 working poor and the middleclass that are clearly too often  
9 under attack.

10 And I'm proud to say that by this gathering, our  
11 energy utilities have agreed to a family guarantor program,  
12 where a family member can sign for a utility customer, as  
13 opposed to putting up a deposit.

14 And I've initiated discussions with Pay Day  
15 lenders and other financial institutions that serve the  
16 underserved to look at an expansion of guarantor programs, so  
17 that utility bills are not driving Californians into poverty.

18 I should also point out that on a national level,  
19 I'm a member of the National Association of Regulatory Utilities  
20 Commissioners. I sit on both the Gas and Critical  
21 Infrastructure Committees. I'm very proud to be members of  
22 these committees, and I've utilized it as an opportunity to have  
23 a national voice on behalf of California in ensuring that our  
24 economy has sufficient supplies of natural gas, and that our  
25 infrastructure takes the top priority, as has been demonstrated  
26 by the Governor and the Legislature.

27 In all, I just want to say that this has been a  
28 year that I've truly enjoyed. The California Public Utilities

1 Commission is a great job, and I'm very honored to serve with my  
2 fellow Commissioners and to have the ability to weigh-in on such  
3 important issues as: broadband deployment; the reduction of  
4 greenhouse gases; rail safety; making sure that our wireless  
5 customers understand their contracts; in-language proceedings to  
6 ensure that people that are English language learners are  
7 receiving fair treatment in the contracts that they execute with  
8 utilities.

9 I'm indeed honored, and I ask for your support  
10 and vote.

11 And I want to also thank Senator Mark  
12 Ridley-Thomas for his support throughout this process.

13 Senator Perata, my family is here.

14 CHAIRMAN PERATA: I'd like you to introduce them,  
15 please.

16 MR. SIMON: Thank you very much. They're out in  
17 the hall because they couldn't get in.

18 CHAIRMAN PERATA: If some of the lobbyists here  
19 would leave --

20 [Laughter.]

21 MR. SIMON: I'd like to start by --

22 CHAIRMAN PERATA: Inviting them in. That'd be  
23 good. That's a good opener.

24 [Laughter.]

25 MR. SIMON: First, I'm very honored to have my  
26 fiancée and companion of ten years, she also serves as President  
27 of the San Francisco Port Commission, and she's a senior vice  
28 president with Morgan Stanley, and also so happens to be a

1 Democrat, I might add. And that's my beautiful fiance, Kimberly  
2 Brandon, Kim.

3 Walking in the room right now is my oldest son,  
4 Nahel Simon. Nahel, could you take a bow. Nahel is a student  
5 at Laney College in Oakland, California. He works with Don Todd  
6 and Associates. He has a major and focus in construction  
7 management. He's my oldest son, and I'm very proud of him.  
8 He's a graduate Merritt Middle College High School in Oakland.  
9 And he's indeed someone that is a great inspiration to me, my  
10 son Nahel.

11 And then my dreadlocked son, Jamal, is here as  
12 well.

13 CHAIRMAN PERATA: Did you have to clock him to  
14 get him to come?

15 [Laughter.]

16 MR. SIMON: Well, Jamal practices a marshal art  
17 known as Muay Thai. And I think someone Muay Thai-ed him the  
18 other night.

19 [Laughter.]

20 MR. SIMON: Jamal attends San Jose City College  
21 and actually informed his dad last night that he plans on  
22 serving his country and enlisting in the United States Air  
23 Force, and I'm very proud of him as well.

24 [Applause.]

25 CHAIRMAN PERATA: I see no lobbyist moved. You  
26 know, if you read your contracts, if you're within 50 feet of  
27 the room, you can bill.

28 [Laughter.]

1 MR. SIMON: Oh, I'm sorry, Senator. My baby  
2 girl, my daughter.

3 [Laughter.]

4 MR. SIMON: My daughter Suphia, who's a sophomore  
5 at Skyline High School in Oakland, California, and is a proud  
6 member of the Titans Varsity Volleyball team that won the OAL.  
7 She's an advanced placement and honors student, and I'm very  
8 proud of her. And I appreciate her taking a day off school  
9 today to be here with her daddy.

10 [Applause.]

11 CHAIRMAN PERATA: I think that I'll defer if  
12 you'd like to open, Senator Padilla.

13 SENATOR PADILLA: Thank you, Mr. President.

14 Couple questions. First of all, I appreciate  
15 Commissioner Simon's willingness to make himself available to me  
16 throughout the course of the last year, when you were first  
17 appointed. As you know, there was a lot of scuttlebutt about  
18 your appointment. I think a wise decision was made to not rush  
19 towards a confirmation hearing, but to grant you as close to a  
20 year as possible to establish your record, and establish your  
21 reputation on the Commission based on a number of issues and  
22 specific actions that you would take in the course of a year.

23 And as time went on, whether it was in language  
24 contract billing, or broadband deployment, to a whole myriad of  
25 issues, you were available to me, and I do appreciate that.

26 Not to say that we agreed all the time, but that  
27 was very helpful.

28 To focus on just a couple of issues today, one



1 is, and we just talked about this yesterday, with respect to the  
2 CPUC's preliminary decision on recommendations regarding  
3 greenhouse gas reduction strategies.

4 As you know, not only I but Senator Ridley-  
5 Thomas are former members of the Los Angeles City Council. And  
6 the City of Los Angeles is served not by an investor-owned  
7 utility, but by the largest municipal utility in America. And  
8 to suggest, as these preliminary strategies do, that municipal  
9 utilities ought to be treated the same as investor-owned  
10 utilities, and be forcibly brought into a cap and trade system  
11 to achieve greenhouse gas reductions as sought by AB 32 does not  
12 make sense to me.

13 So, we began to talk about it just yesterday in  
14 my office, and I'd love to get your thoughts on the record here  
15 today?

16 MR. SIMON: Thank you, Senator.

17 I share your views that to treat a  
18 municipal-owned utility the same as an investor-owned utility, a  
19 company that's traded on a national stock exchange and is  
20 competing globally for capital investments, is probably  
21 comparing apples and oranges.

22 I'm very sensitive to the issue facing LADWP.  
23 The fact that they are a coal-burning utility, and as such have  
24 had a rate structure that has been impacted by one of the  
25 cheapest source of energies in our state.

26 I do support cap and trade, but I'm anxious to  
27 view the comments of LADWP and other municipal utilities in this  
28 state. And I do believe that we should not dismiss the idea of

1 making accommodations for municipal-owned utilities. My view  
2 is, many of these boards are voted by the electorate. They're  
3 appointed by elected officials. They serve a constituency.

4 The California Public Utilities Commission does  
5 not exercise jurisdiction over these legal entities; however,  
6 the California Energy Commission and the California Air  
7 Resources Board do.

8 But it is clearly my position that the CPUC  
9 should not be in the capacity to force a municipal utility into  
10 a cap and trade system, but I would expect -- and based upon the  
11 letter that I received from your office -- that these publicly  
12 owned utilities will provide verifiable protocol to meet the  
13 standards of AB 32. And as I understand from your office, and  
14 particularly LADWP has accelerated their efforts to reduce  
15 greenhouse gas emissions.

16 So, my view as a regulator is that if they are in  
17 a position to develop a system that is verifiable, I see no  
18 reason why the California Public Utilities' position should  
19 be -- Commission should be in a position to force a particular  
20 cap and trade position on them.

21 But I -- but I do believe that this is a matter  
22 that also the Legislature should examine. As I've stated, that  
23 I'm very interested in reviewing their comments, and I'm looking  
24 forward to working with your office, and the other Senators  
25 here, particularly those who are on the Utilities Committee, to  
26 find a way that we can ensure that the munis, or the publicly  
27 owned utilities are reducing their greenhouse gases, and are in  
28 compliance with AB 32. The mechanism that they embrace, I

1 think, is secondary as long as they're achieving the goals.

2 SENATOR PADILLA: I appreciate that. And just  
3 for the record, since you do make reference to LADWP's power  
4 supply representing a larger percentage of coal compared to  
5 other utilities in the state, the standard that calls for a 20  
6 percent renewable portfolio standard by 2017 has been  
7 accelerated, as you've acknowledged, by the City of Los Angeles  
8 on their own to achieve that same goal by 2010. So, they're on  
9 an accelerated timeframe.

10 And second, you also commented on investor-owned  
11 utilities and their relationship to shareholders, and  
12 recognizing their motivation to derive profits as a result.

13 In contrast, municipal utilities, the LADWP  
14 specifically, is not trying to deliver profits or dividends to  
15 shareholders. They're owned by and are accountable to  
16 ratepayers, meaning the people who live and work in Los Angeles,  
17 residential and business customers.

18 So, this verifiability that you talk about in my  
19 opinion is not as much even to the PUC, but to the local  
20 decision makers of the municipal utility here, and the people  
21 who hold them accountable, which is the public.

22 All that being said, it seems to you like it's  
23 apples and oranges when you talk about IOUs and munis. But I  
24 want to get more of a clearer sense if you do agree with my  
25 position that municipal utilities ought to be carved out of this  
26 particular proposed strategy.

27 MR. SIMON: As you know, Senator, and I'm not  
28 going to waiver on this, but it's important that I point out

1 that this is an interim proposed decision. It's a matter that  
2 we'll be voting on in August, if my estimation's correct.

3 This is a joint process with the California  
4 Public Utilities Commission and the California Energy  
5 Commission. And the Energy Commission does have jurisdiction  
6 over the publicly owned utilities.

7 With that said, I am prepared to give close  
8 consideration to carve outs or other accommodations for the  
9 publicly owned utilities. I do not believe that they are the  
10 same business model as investor-owned utilities.

11 I'm concerned as what you estimated as a 20  
12 percent rate hike that the LADWP customers would face,  
13 particularly those customers who are economically impacted.  
14 Many of the publicly owned utilities do not have the same type  
15 of low-income programs that our investor-owned utilities have,  
16 so I even -- so I think the impact could be even greater.

17 And for that reason, yes, I am prepared to look  
18 at carve outs or other accommodations that will not jeopardize  
19 the health, safety and welfare of the ratepayers that the  
20 publicly owned utilities serve.

21 SENATOR PADILLA: The other question today is  
22 also on the power side of what you do as a Commissioner. There  
23 are unique safety concerns that emerge when public utility  
24 projects are proposed in urban areas.

25 What standard of proof do you believe the  
26 Commission should require of an applicant or an application to  
27 demonstrate that a utility project, power plants or otherwise,  
28 can be constructed or operated safe in urban areas versus more



1 rural areas of the state?

2 MR. SIMON: Well, it's the California Energy  
3 Commission that actually permits energy facilities. However, to  
4 the extent that they serve the load, we as the CPUC, do have  
5 jurisdictions over this process, particularly in inner-city and  
6 underserved communities, industrial zones. Clearly, I'm looking  
7 for the full and complete complement of environmental reviews to  
8 ensure that we do not engage in environmental injustice in our  
9 efforts to increase our energy capacity here in the State of  
10 California.

11 However, at the same time, I really think we need  
12 to convene, particularly in reference to the renewable energy  
13 arena, that we need to convene statewide a review of our  
14 permitting and interconnection process with the Cal ISO. Right  
15 now, our queues are backed up even, and in terms of our local  
16 permitting process, I think we're putting the energy usage of  
17 Californians at risk because of a very layered and, to a  
18 large -- I don't want to say dysfunctional -- but a set of  
19 regulations that lack a certain degree of functionality.

20 For that reason, myself and my colleagues are  
21 looking closely at the permit process to ensure that we can  
22 bring our renewable sources under our renewable portfolio  
23 standards on line and in compliance with regulations and  
24 laws.

25 SENATOR PADILLA: Thank you.

26 MR. SIMON: Senator Perata, my Dad actually just  
27 entered the room.

28 CHAIRMAN PERATA: Please.

1 MR. SIMON: I'm very honored to introduce my  
2 father, Joseph Floyd Simon, who came here in 1944, I believe,  
3 from Lake Charles, Louisiana to serve at Port Chicago as part of  
4 the process of cleaning up the munitions explosion, one of the  
5 tragic aspects of California history, and also studied at the  
6 St. Augustine Seminary in Bay St. Louis, Mississippi, and then  
7 served under the Nixon administration and the Peace Corps as a  
8 Regional Director.

9 And I'm very honored and proud that he could be  
10 here today. Thank you, Dad.

11 CHAIRMAN PERATA: Welcome.

12 [Applause.]

13 MR. SIMON: My mother, Betty Simon, has gone on,  
14 but she's with us today in spirit. She was actually one of  
15 Governor Jerry Brown's first appointees to the California  
16 African-American Museum Board. And I want to just acknowledge  
17 her sacrifice and impact on my life and the lives of many in San  
18 Francisco.

19 CHAIRMAN PERATA: Thank you.

20 Senator Ashburn.

21 SENATOR ASHBURN: Thank you, Mr. President.

22 First, I want to thank you for your openness.  
23 We've had the opportunity to visit a number of times since your  
24 appointment. I have been very pleased with the willingness that  
25 you've demonstrated to communicate relative to the issues that  
26 you've undertaken at the PUC and the role that you've taken as a  
27 Commissioner there.

28 Questions have been raised, and you raised them

1 yourself in your testimony, regarding your role in this  
2 particular event, the seminar. And so, I want to go through a  
3 series of questions with you about that, because I think it's in  
4 everyone's best interest to have as much information as possible  
5 on that topic.

6 Let me ask you first, is it appropriate for you  
7 to solicit donations from entities that you regulate?

8 MR. SIMON: Well, thank you, Senator Ashburn.

9 Let me first say regarding the New Green Energy  
10 Economy Summit, that the funding process that went to the  
11 501(c)(3) fiscal agent, that being the Willie Brown Institute,  
12 was reviewed by the Public Utilities Commission's Legal  
13 Department and was given basically a clean bill of health in  
14 terms of the fact that the payments were not going to the  
15 California Public Utilities Commission, but the 501(c)(3) that  
16 was actually the sponsor and partner with other organizations of  
17 the event, that being the -- along with the Ella Baker Center  
18 for Human Rights, Green Jobs for All, the California Clean  
19 Technology Fund, and the Apollo Alliance were all joined  
20 together in this process.

21 However, to whatever extent my actions created  
22 the slightest scintilla of impropriety, I take full and complete  
23 blame, and extend my apologies to all of those who participated  
24 in this summit.

25 But my apology particularly goes to those young,  
26 many minority communities that I've mentioned that rely upon us  
27 to find workforce investment strategies to engage them in this  
28 sixth largest economy in the world. They are who I really give

1 my apologies to, because that was the purpose of this summit.

2 But be that as it may, to whatever extent as a  
3 practicing attorney and law professor, I believe that to  
4 whatever extent there is ever a perception of impropriety, then  
5 there is a problem. And to that extent, I take full  
6 responsibility.

7 The event was my vision. The funding apparatus  
8 was of my design. And at the time, I did not believe that there  
9 were any improprieties involved.

10 We vote on approximately 45 agenda items a  
11 meeting. And the particular item that I am accused of having a  
12 relationship with in terms of the fundraising was actually  
13 determined in November.

14 So, but with that said, still, if the California  
15 public, if the Los Angeles Times, or if anyone feels that  
16 there's any sign of impropriety, then clearly I am going to  
17 review my procedures going forward and ensure that I do not  
18 jeopardize the integrity of the California Public Utilities  
19 Commission.

20 SENATOR ASHBURN: But let's get to the point,  
21 though.

22 Did you solicit funds from entities that are  
23 regulated by the PUC?

24 MR. SIMON: Yes.

25 SENATOR ASHBURN: Did you personally?

26 MR. SIMON: I instructed my staff to send  
27 sponsorship letters that were on the letterhead of the  
28 California Public Utilities Commission and the Willie Brown



1 Institute. In these sponsorship letters, there was a list of  
2 sponsorships that utilities and other businesses -- this is very  
3 important to point out. It wasn't fully underwritten by the  
4 public utilities that we regulate, but there were sponsorship  
5 packages there that were sent by my instructions by my staff,  
6 yes, Senator.

7 SENATOR ASHBURN: So, you personally solicited  
8 funds.

9 Did you ever make a phone call to any of the  
10 entities that may have been regulated by the PUC soliciting  
11 funds?

12 MR. SIMON: Senator, I did make phone calls  
13 thanking contributors. And those contributors went over a large  
14 breadth of entities that participated --

15 SENATOR ASHBURN: Did you thank them --

16 MR. SIMON: -- at this event.

17 SENATOR ASHBURN: -- before the contributions  
18 were made or after they were made?

19 MR. SIMON: I thanked them when I received  
20 notification from my staff that a particular business had agreed  
21 to make a contribution towards the summit that was designed to  
22 create green-collar jobs for underserved communities.

23 SENATOR ASHBURN: The allegation has been raised  
24 that there may have been a relationship between the  
25 solicitations received and a vote taken by the PUC two weeks  
26 after donations were received with respect to an award bonus  
27 program for utilities that had failed to meet power savings  
28 goals.

1 MR. SIMON: I emphatically deny that allegation.  
2 Emphatically and categorically, Senator.

3 SENATOR ASHBURN: Did those entities make  
4 contributions?

5 MR. SIMON: Yes, Senator. Those entities did  
6 make contributions, but I should point out that the proceedings  
7 involving the energy efficiency proposed decision that was  
8 presented for the Commission, those had been underway since  
9 October of 2007. And by no means did the contributions by  
10 utilities who -- who oversee approximately \$57 million in  
11 philanthropy, by no means did the 150,000 that the energy  
12 companies that were regulated under that ruling have any impact  
13 whatsoever on my vote.

14 Senator Ashburn, clearly there is no quid pro quo  
15 in my office, and I think I can speak comfortably for the other  
16 four offices that I'm honored to work with.

17 SENATOR ASHBURN: You understand, however, that  
18 there is the appearance, and that goes back to your first  
19 answer, that contributions were solicited; contributions were  
20 received; and two weeks following, there was a vote. And an  
21 action was taken that changed the policy of the PUC with respect  
22 to these particular entities, and that it was a more favorable  
23 position for those who had given donations.

24 MR. SIMON: Senator, as I have acknowledged, to  
25 whatever extent there were any signs of impropriety, I take full  
26 obligation. And I am, as a public servant and as a man,  
27 extending my apologies.

28 But I should also point out that the California

1 Public Utilities Commission, Senator, meets every two weeks. We  
2 vote on approximately 90 items a month. And by no means did my  
3 vote, which was a 5-0 vote for the modification of the energy  
4 efficiency program, something that is the number one priority of  
5 our Energy Action Plan, that being energy efficiency, by no  
6 means did those contributions from the utilities impact my vote  
7 in any form and fashion.

8 It's no different than when myself or some of you  
9 are asked to speak at luncheons or dinners, and certain entities  
10 that we regulate, or that we have constituent relationships  
11 with, are sponsors or participants in those luncheons or  
12 functions, do they impact the votes that go on in this very  
13 building.

14 SENATOR ASHBURN: I would find that to be a  
15 stretch in comparing how our attendance at an event and the role  
16 that you described yourself in sending out e-mails, using Public  
17 Utilities Commission letterhead, making phone calls, you were  
18 not merely a participant. You were the sponsor. You were the  
19 entity that was soliciting the contributions. I don't see that  
20 that is comparable.

21 Let me go at this a different way. This was a  
22 not-for-profit that was the recipient of the funds?

23 MR. SIMON: Correct.

24 SENATOR ASHBURN: Have you played any role in the  
25 distribution of the funds?

26 MR. SIMON: No, I have not.

27 SENATOR ASHBURN: Have you inquired as to the  
28 distribution of the funds?

1 MR. SIMON: No, I have not.

2 SENATOR ASHBURN: How was the not-for-profit that  
3 received these funds that you solicited selected?

4 MR. SIMON: It was selected based on a long  
5 relationship that I have personally had with former Mayor and  
6 Assembly Speaker Willie Louis Brown, Jr., a public servant that  
7 I have the utmost admiration and respect for.

8 He formed the Willie Brown Institute of Public  
9 Policy and Leadership for the specific purpose of creating  
10 opportunities for young people to engage in the honorable -- in  
11 the honorable field of public service.

12 I had worked with the Willie Brown Institute  
13 prior to my relationship with the Governor, in no paid capacity,  
14 but we also worked on sponsoring an event involving the  
15 Community Reinvestment Act, and how to find more innovative ways  
16 to have financial institutions reinvest in underserved  
17 communities under Community Reinvestment Act requirements. I'm  
18 not a member of the board. I'm not in any way a member of the  
19 executive staff. It is a 501(c)(3) that's in good standing in  
20 the State of California.

21 And to the extent that I'm really not in a  
22 position to speak for the institute, in that I am not an officer  
23 or a director, but I am honored to have an affiliation with  
24 Willie Louis Brown, Jr. and his Institute based upon what I  
25 consider the very significant important public service that it  
26 provides.

27 SENATOR ASHBURN: Is it possible that there are  
28 other not-for-profit organizations throughout California that



1 would likewise have liked the opportunity to participate in this  
2 particular summit or other summits? And was there a mechanism  
3 for soliciting their involvement?

4 MR. SIMON: As I mentioned, we had other  
5 501(c)(3)s that were involved in the event, that being the  
6 Apollo Alliance, the Ella Baker Center for Human Rights, the  
7 California Clean Energy Fund.

8 However, I did make the selection of the Willie  
9 Brown Institute being the fiscal agent for this event because  
10 I'm very familiar with their sound, generally accepted  
11 accounting principles and the standards by which former Mayor  
12 and Assembly Speaker Willie Brown operates a nonprofit.

13 SENATOR ASHBURN: And the purpose, as I  
14 understood it, was to generate interest among young people in  
15 becoming involved in clean energy?

16 MR. SIMON: Absolutely.

17 SENATOR ASHBURN: Employment --

18 MR. SIMON: Yes.

19 SENATOR ASHBURN: -- opportunities in the future?

20 MR. SIMON: Correct.

21 SENATOR ASHBURN: But you've indicated, I  
22 believe, in your answer that you have no knowledge of how the  
23 funds were distributed toward that goal?

24 MR. SIMON: Well, we did provide scholarships for  
25 participants in the event, of many, many young people. It was  
26 Mayor Gavin Newsom that stated in the opening comments in the  
27 morning that -- that, you know, for the first time he was  
28 looking upon an audience, a diverse audience of faith-based, and

1 communities of color, and academics.

2 You know, it was -- it was an extraordinarily  
3 powerful event. I think it's important that I emphasize that.  
4 And from that event we've established a Workforce Advisory  
5 Board.

6 I just met with Professor Pender of San Francisco  
7 State University to develop strategies, looking at land use and  
8 other issues that utilities face, and how we create an  
9 environment that is bringing to the attention of many young  
10 people, some of whom have not had the experience of a solid job  
11 in their household, in their family, for generations now. And  
12 how that we can do soft-skill training to create an appreciation  
13 for what a good utility's job can mean for a family.

14 So yes, there was -- there was support given to  
15 make certain that the participation covered a wide breadth of  
16 California, and Senator, there's cost associated with that  
17 process.

18 SENATOR ASHBURN: You've given two general  
19 answers, it seems to me. One is to justify that what you did  
20 was proper. And the other is to apologize for it.

21 MR. SIMON: Absolutely. I think that's very well  
22 stated, Senator.

23 SENATOR ASHBURN: I mean, obviously those are two  
24 contradictory answers. So, it begs the question as to whether  
25 this was the right thing for you as a regulator to do.

26 All merits of the conference, benefits to the  
27 participants, to the young people, the diversity of  
28 participation, all those issues aside, there is fundamentally a

1 question of right and wrong.

2 And I'm not clear as to whether you feel that  
3 what you did was right as a regulator in soliciting funds from  
4 those regulated, and whether you would do it again?

5 MR. SIMON: Senator, as an attorney I want to  
6 point out that I sought legal counsel and direction, and  
7 approval in the structuring of the event. I think that's very  
8 important.

9 However, as a public servant, I recognize -- and  
10 an attorney, based on my code of ethics, I recognize, as I've  
11 stated before, that if there were any signs of impropriety, if  
12 there's a public perception of impropriety, no matter how legal  
13 it is, then it is a process that I should examine and put under  
14 close consideration going forward.

15 Will I, as a regulator, encourage utilities like  
16 PG&E to establish their power pathway program that was announced  
17 at this summit, a program that is providing linesmen, utility  
18 jobs, a training program at Laney College of the Peralta  
19 Community College District, City College of San Francisco, and  
20 Fresno Community College, I might add, I'm very honored that  
21 Peter Darvey, the Chairman of Pacific Gas and Electric, chose to  
22 make that announcement at the Green Jobs Summit.

23 Yes, Senator, I believe that's a good thing. I  
24 believe there are a lot of kids from minority communities who  
25 had no idea that you can have a high paying job without a  
26 college degree in a utility if you go through an 18-month  
27 training program. Absolutely, Senator. I think that is a  
28 superb and excellent accomplishment on the part of those of us

1 who staged the summit.

2 But as I've stated, to the degree that I  
3 solicited utilities and asked them to fund this event that was  
4 designed to help them deal with the reality of a 43 percent  
5 retirement-eligible workforce, that's something I should point  
6 out. I think it came out in the article.

7 This idea was based on discussions that I had  
8 with utility executives, who were sharing with me, as the State  
9 of California, and CalPERS President [sic] Fred Buenrostro has  
10 stated, California now is looking at a 40 percent retirement  
11 state -- of state employee retirement levels.

12 We have to develop strategies to ensure that  
13 Californians are participating in this economy. If not, and  
14 I've used this example from the bully pulpit, you take countries  
15 like the United Arab Emirates, or Kuwait, that have very low  
16 population density, and therefore import labor. They also have  
17 high per capita income, so they import labor from other  
18 countries.

19 If we, as public officials in California, do not  
20 develop realistic strategies on how to employ these kids that  
21 are being failed, to a large degree, by our educational  
22 system -- and I'm not trying to scapegoat or throw anybody  
23 under the bus -- who are coming out of high school with  
24 insufficient skills to compete, if we don't develop realistic  
25 investment strategies to make them competitive, then what we  
26 will see is a labor imported into this state from other areas.  
27 And that importation will go right past the very communities  
28 that we serve that have high levels of unemployment.



1                   So, I can't say that the summit was a bad thing,  
2     Senator. I just -- I honestly cannot say that.

3                   But I can say to whatever extent that my asking  
4     the utilities to help underwrite a gathering, a symposium, a  
5     function that was designed to help them tackle the problem of  
6     filling retirement positions while they also deal with age, aged  
7     infrastructure that has to be expanded, the renewable mandates  
8     that have been imposed by the Legislature, we have in essence  
9     here a potential perfect storm of circumstances involving our  
10    labor force here in California.

11                  And also, in respect to those entities that  
12    helped support the event, I think for me to sit here and say  
13    that the event was a bad thing would be an abdication and a  
14    betrayal to the resources that they provided.

15                  We are still working in this workforce  
16    development area. It's an area that I have a strong passion for  
17    as a Utilities Commissioner. I think the people of California,  
18    and particularly the California economy, will benefit.

19                  SENATOR ASHBURN: Nothing further, thank you.

20                  MR. SIMON: Thank you, Senator?

21                  CHAIRMAN PERATA: Gilbert.

22                  SENATOR CEDILLO: Back to driver's license.

23                               [Laughter.]

24                  SENATOR CEDILLO: I appreciate your candor.

25                  Obviously, Senator Ashburn and the entire  
26    Committee, has not paid to get up and see the presentation that  
27    was on the front page of our local newspaper.

28                  But we appreciate your candor and the depth of

1 your explanation.

2 Clearly, I heard you say that you sought  
3 counsel. It doesn't appear that anything was illegal or beyond  
4 any kind of boundaries of ethics or codes of conduct.

5 But clearly, I think you recognize that for all  
6 the good, that we always as public servants have to be concerned  
7 about any --

8 MR. SIMON: Absolutely.

9 SENATOR CEDILLO: -- sense, any image. We have a  
10 higher standard, highest standard, probably, when we take this.  
11 So, I thank you for that.

12 I want to ask you just a local question, given  
13 that all politics is local. Now that I am also a resident in  
14 Sacramento, my other local paper, the Sacramento Bee, ran an  
15 editorial on February 7th about safety first for underground gas  
16 storage.

17 Are you familiar with that?

18 MR. SIMON: No. I've read -- I have read the  
19 article, but I'm not fully familiar, or my recall is not  
20 exacting at this point.

21 SENATOR CEDILLO: Then just briefly a couple  
22 questions. One is with respect to the unique safety concerns  
23 for public utility projects in urban areas.

24 What standard of proof should the Commission  
25 require for an applicant to demonstrate that the project is  
26 constructed within the safety concerns that the people would  
27 have in an urban area with that type of density that we're  
28 familiar with?

1 MR. SIMON: Well, clearly I would support the  
2 highest standards of safety and will meet with our Consumer  
3 Safety Division in this regard to go over the Sacramento Bee  
4 article.

5 But regardless if it is gas or electricity  
6 transmission, or railroad crossing safety, any time residents of  
7 this state are potentially in harm's way, I think that any  
8 construction should have the highest standard of review to  
9 ensure the safety of the citizenry.

10 At the same time, we all use gas. We all use  
11 electricity. And we do have to find right of ways in order to  
12 have an effective and efficient level of distribution. But it's  
13 my belief, similar to -- I heard a Federal Energy Regulatory  
14 Commissioner Spitzer, reference a term from the French  
15 Revolution that with -- with privilege, there's also an  
16 obligation.

17 And I think that as we look at California's  
18 challenge of creating a more efficient and growing  
19 infrastructure, we need to look at the communities that have not  
20 been historically the recipients of gas lines, and transmission  
21 lines, and other necessary yet dangerous industrial processes to  
22 ensure that we are all sharing or taking our fair share of  
23 industrial growth which is necessary for our economy, but should  
24 not always be directed to poor communities. I have a real issue  
25 with that.

26 SENATOR CEDILLO: I appreciate that.

27 Just let me ask, and I don't want to prolong  
28 this, but if I could count on you to work with us and our local

1 city council about our concerns for safety?

2 MR. SIMON: Absolutely, Senator. I will -- my  
3 staff and I will get back to your office specifically regarding  
4 this pipeline and provide you a full report on our role in  
5 ensuring the safety. And I will make sure that Richard Clark,  
6 our director who heads our Consumer Safety Division, is aware of  
7 my efforts in this regard.

8 SENATOR CEDILLO: And now the Dream Act, Senator  
9 Perata?

10 Thank you very much.

11 CHAIRMAN PERATA: Senator Dutton.

12 SENATOR DUTTON: I'm fine.

13 CHAIRMAN PERATA: I have a couple of questions.  
14 One is, and this probably started midway in your first year, but  
15 I believe the Chairman of the PUC has launched something that he  
16 calls the Climate Change Research Institute in the UC system.  
17 It's worth about \$600 million of ratepayer money.

18 I, as a ratepayer, as one of the ratepayers that  
19 pay this, the other two-thirds of us will and one-third won't,  
20 best of my recollection, climate change affects public and  
21 private held utilities and municipals.

22 I think it's a singularly bad idea. I don't know  
23 that there's anything that we can do about it during the budget,  
24 but if we can, I assure you I will.

25 You mentioned earlier about the Air Board, and  
26 you probably know that under AB 32, which has been much  
27 ballyhooed certainly by the Governor, it is the industries that  
28 are supposed to be paying for the impacts of climate change.



1 So, I think the effort is contradictory to the law.

2 I don't know whether or not this is going to be a  
3 hobby or what for somebody upon graduation, but I'd be  
4 interested in knowing what your point of view is, and why you  
5 felt compelled to support it?

6 MR. SIMON: Well, I'm actually reviewing the  
7 proposed decision and comments as we speak.

8 As I look at the standards required under AB 32,  
9 and our renewable portfolio standard, it's clear to me that we  
10 have to be in a position, as a state, to fund our research and  
11 development. And I think the proposed decision points out  
12 applied research and development.

13 We're not looking to fund theoretical processes.  
14 We're looking for those applications that can hit the  
15 marketplace and put this state in a position to reduce its  
16 carbon footprint in concert with other sovereigns around the  
17 world that we have recognized need to participate in this  
18 process.

19 Senator, it's a debate that, you know, has  
20 national and global implications. Even in one of the  
21 discussions I had with a Member of this Committee, I pointed out  
22 that the emission of carbon's a bad thing, regardless of how  
23 people feel about climate change, and I clearly support that.

24 And if we're looking at how we can ensure that  
25 the proper technologies are coming into place to reduce the  
26 carbon footprint, then there has to be funding mechanisms in  
27 order to support that.

28 We face a deficit in this state. And so, I think

1 the idea that ratepayers are energy users, and ratepayers can  
2 participate in a very apportioned capacity to support research  
3 and development, to reduce the amount of the carbon that we use  
4 as utility customers, should be under very close review. It  
5 should have strict oversight. It should clearly have  
6 transparency in the standards put forth by Sarbanes-Oxley, but  
7 we do need research and development in this area.

8 We've actually fallen behind in the last 30 years  
9 in this space. And to the extent that we can, I think, lessen  
10 the blow to the ratepayers, and that's a complicated process  
11 when we look at certain ratepayers that currently are under rate  
12 freeze. I mean, it's a complicated process, and I'm not here to  
13 offer the silver bullet of a solution. But I do know that our  
14 state is in peril in this area, and President Peevey made the  
15 bold step to try to find a statewide mechanism. The UC system  
16 is simply one of the proposed hubs, but it's designed to fund a  
17 multitude of institutions that can engage in the research and  
18 development in this area.

19 And I'm proud to say that it even has a workforce  
20 investment and development piece in the proposed decision that  
21 my office contributed to.

22 CHAIRMAN PERATA: I'm not suggesting that it  
23 shouldn't go, if it were, to UC. I mean, USC would be another  
24 issue, but not UC, of course.

25 [Laughter.]

26 CHAIRMAN PERATA: But I just I want to caution.  
27 It's really fun to be up in the cheap seats every once in  
28 awhile, so I like to revel in it.

1                   Just caution you and the Commission that, at the  
2 time when it's going to be very difficult for people who are  
3 paying gas prices at \$100 a barrel, and who are watching their  
4 net worth, at least in their homes, dissipate by 20 or 30  
5 percent, every dollar that we ask through a rate, or through a  
6 tax, or a fee is the same dollar.

7                   And if we're going to have a hierarchy here,  
8 there are probably things that you and I would put in front of  
9 that particular endeavor. That's really my point.

10                  You mentioned earlier about the EJ community. I  
11 just want to point out that there is a growing -- and I'm sure  
12 you're aware of this -- there's a growing unrest among the  
13 environmental justice advocates about cap and trade. And  
14 because you have some facility with the subject matter and the  
15 background, I would urge you to be particularly careful in both  
16 in the access that you provide them, but also the advocacy that  
17 would follow.

18                  MR. SIMON: Thank you, Senator, and I'm paying  
19 close attention to the comments that have been submitted by the  
20 Natural Resource Defense Council and other environmental groups  
21 in this proceeding.

22                  CHAIRMAN PERATA: And then, I just want to go  
23 back to Senator Ashburn's comments.

24                  I can't say that I wake up in the morning and  
25 read the LA Times. I don't consider that, nor the Bee, my local  
26 paper.

27                  But I think what caught many of us by surprise is  
28 that by law, Legislators are not allowed to do. As Leg. Counsel

1 says, what was done was awful but lawful.

2 It is one of those things that I think in  
3 retrospect -- they, too, like to opine every once in awhile in  
4 the margins -- but we would have to, anytime we solicit, and we  
5 all do, and Members of the other House and this House  
6 periodically are tattooed for it, but we solicit, but we have to  
7 fill out a behest form within 30 days, which is the disclosure  
8 form that you're not required to file, I know. I've checked,  
9 and it would require a statute and an amendment to the PRA. We  
10 will do that. We're not going to name it after you.

11 [Laughter.]

12 CHAIRMAN PERATA: I know what it's like to get a  
13 legal opinion that is worthless and still you're held  
14 accountable. It's like the IRS: You pay for it. I don't care  
15 who told you it was okay.

16 So, that particularly was a problem.

17 What I am really astounded by is that there  
18 wasn't some somebody there who had been there for awhile would  
19 not have pointed out to you that doing anything on state time,  
20 particularly, or staff time, or anything that was the use of  
21 state e-mails, computers, is just prima facie in our business,  
22 whether it's for a campaign or private purposes, or anything, is  
23 illegal.

24 And I have a great respect for lawyers, but you  
25 might want to just go back and talk to these people, because  
26 they should have advised you better on the depth of the problem  
27 as opposed to just what is there.

28 I am curious, however, how much was raised by



1 your efforts? Or is it possible to parse that out?

2 MR. SIMON: Again, it comes under the 501(c)(3),  
3 but at count, 357,000 was raised in total based on our current  
4 count. And approximately 150,000, 50,000 apiece, came from the  
5 energy companies, and I would estimate approximately another  
6 50,000 came from the telcos, who also were -- helped support  
7 this effort.

8 And I -- and I take your advice very seriously,  
9 Senator, and I thank you.

10 And to the extent -- I mean, I think the article  
11 was regrettable, but if it creates a higher standard in terms of  
12 our efforts to do this work, then I'll accept it as a sign and a  
13 calling. And I'll look closely at the procedure that you put  
14 forth that elected officials have. If it is a higher standard,  
15 then I'm prepared to embrace those procedures.

16 CHAIRMAN PERATA: Well, you have both an  
17 administrative and a quasi-legislative of function. And  
18 sometimes we only find this stuff out by situations like this,  
19 but we should make sure that doesn't happen again.

20 Any more family come in since we started?

21 [Laughter.]

22 CHAIRMAN PERATA: Those who would like to come up  
23 and briefly offer their support for the Commissioner, please do  
24 so.

25 MR. HACKNEY: I have more than a few minutes  
26 here.

27 CHAIRMAN PERATA: No, you don't.

28 [Laughter.]

1 CHAIRMAN PERATA: Go ahead, Carl.

2 MR. HACKNEY: Thank you very much.

3 My name is Carl Hackney.

4 Before I start, I'd like to say to Senator  
5 Ashburn and Don Perata, Senator Perata, not only did the  
6 utilities help fund this, but my firm, as an African-American  
7 firm, donated \$15,000 thousand, as did a number of other  
8 African-American and Latino firms. We saw the need for this  
9 conference and the need for employment.

10 We let the digital divide pass us by in the urban  
11 marketplace. We felt we could not let the green initiative pass  
12 us by.

13 To begin, to Senator Don Perata, Senators, as you  
14 have served the State of California as an elected official, I  
15 have served this great country as a military officer for over 32  
16 years in the active and reserve components.

17 The purpose of my speaking today is to highlight  
18 the opportunity the State of California Public Utilities  
19 Commission has in adding a uniquely qualified and committed  
20 individual to the board, Timothy Alan Simon. Through this  
21 Committee and confirmation process, not always are there an  
22 opportunity to add an individual that's so qualified to fill  
23 this position representing the people of California.

24 Timothy Simon is an individual adept at  
25 interacting with the leadership of industry and valued  
26 communities and consumers the Public Utilities Commission  
27 serves.

28 I have known and worked with Tim in the business

1 arena and as a fraternity member for over 15 years. It is  
2 through this interaction that I have come to know Commissioner  
3 Simon possesses the qualifications and the commitment to serve  
4 as a Commissioner of the Public Utilities Commission.

5 It is extremely important that the Public  
6 Utilities Commission be diverse and has a Commissioner that  
7 understands the challenges that small businesses face in their  
8 effort to be a viable part of the State of California's economic  
9 infrastructure, as small businesses create over 80 percent of  
10 the new jobs in California.

11 Tim Simon is that individual. He has been  
12 instrumental in providing insight and assistance to Latinos,  
13 African-Americans, and women-owned businesses.

14 Commissioner Simon was appointed by the Governor,  
15 Arnold Schwarzenegger, in February, 2007. It is rare that an  
16 African-American is selected by the Governor to serve in such a  
17 prestigious and highly visible position.

18 As a military officer with over 32 years in the  
19 U.S. Army and the Army Reserve component, I have served in three  
20 major conflicts for this country: Vietnam, Desert Storm, and  
21 Operation Iraqi Freedom. And as a businessman and philanthropic  
22 giver, I believe I'm an excellent judge of character. The  
23 success in military and in public missions hinges on the  
24 effective, and competent, and inspiring leadership. Timothy  
25 Simon possesses these required attributes.

26 In December, 2007, I had the honor of presenting  
27 to Commissioner Simon the Civic Leadership Award of the 100  
28 Black Men. Commissioner Simon received this award because of

1 his dedication in supporting California's infrastructure and his  
2 commitment to actively promoting and encouraging diversity to  
3 reflect California's diverse population.

4 As a Commissioner, Timothy Simon has voted in  
5 many instances to protect the interests of California's low  
6 minority customers who are dependent on utility service, yet  
7 lack the financial resources to confront the utility companies  
8 that acted in an anti-consumer manner. For example,  
9 Commissioner Simon investigated and uncovered PG&E had  
10 improperly back-billed residential customers over \$35 million,  
11 and required PG&E to refund these funds to the customers.

12 The consumers of California need a visionary  
13 leader that can identify issues, listen to the business  
14 community, and is committed to seeing solutions implemented.  
15 Timothy Simon is that individual.

16 I wholeheartedly encourage you to support and  
17 confirm Commissioner Simon to this position. Thank you.

18 CHAIRMAN PERATA: Thank you, Mr. Hackney.

19 SENATOR POLANCO: Mr. Chairman and Members, I'm  
20 delighted to be here. I'm here not --

21 CHAIRMAN PERATA: That's Richard Polanco.

22 [Laughter.]

23 SENATOR POLANCO: Senator Polanco, former  
24 Senator, not representing any entity, not representing any  
25 client, here as a former colleague, a person who served 16 years  
26 in this institution, a person who served in the capacity as  
27 former Senate Majority Leader, who experienced what you continue  
28 to experience as you duly do your duties and your responsibility



1 to inquire.

2 There is no doubt in my mind that the testimony  
3 that you heard from Mr. Simon was sincere. He owned it. He  
4 stepped right up. And I call it a price of leadership.

5 And it's an opportunity for this body as, Mr.  
6 Chairman, you have indicated, to bring the kind of parameters  
7 legislatively so that it doesn't repeat itself.

8 I'm here to testify that I have witnessed this  
9 Commissioner outreach into the Latino community, the Black  
10 community. I am here to say to this body that it is important  
11 to have this kind of representation of an individual who brings  
12 the experience to a public policy arena that impacts the lives  
13 like no other entity in state government, be it water,  
14 electricity, telecom, rail, and the impacts that the rail  
15 industry is having upon communities as relates to issues like  
16 air contaminants.

17 I'm proud to be here. I've had the opportunity  
18 to work with this man. This man understands government. This  
19 man is an advocate. This man is going to bring the kind of  
20 representation that is going to be balanced. Consumers may not  
21 like the decision at times, and sometimes they'll embrace it.  
22 The industry may not like it, and at times they will embrace it.

23 This is a man who comes balanced, who comes  
24 academically prepared. And with the year that has been given to  
25 him, or almost a year, it has given everyone to see and witness  
26 the contribution that he's made in such a short period of time.

27 And if we were to extrapolate it into the  
28 six-year term, Members, as I sit here, this is going to be a

1 committed, and open, accessible, honest Commissioner that is  
2 going to make a big impact in the area of environmental  
3 considerations, of clean air considerations, of workforce  
4 considerations, and all the considerations that this body, that  
5 this government, has created.

6 I ask that you give the support to move this  
7 nomination to the Senate. He understands the issues, but more  
8 importantly, he cares.

9 Thank you.

10 CHAIRMAN PERATA: Thank you, Senator.

11 Yes, sir.

12 MR. GNAIZDA: Good afternoon, Bob Gnaizda, the  
13 General Counsel for The Greenlining Institute.

14 Greenlining Institute's members include a wide  
15 range of African-American, Latino, and Asian-American business  
16 groups, social service groups, et cetera.

17 I have practiced before the Public Utilities  
18 Commission for 38 years, and I have observed three dozen  
19 commissioners approximately.

20 I think it would be a modest statement to say  
21 that Timothy Simon is easily in the top quartile in terms of  
22 qualifications, and well above that in terms of the leadership  
23 and leadership potential.

24 One example is that the Public Utilities  
25 Commission has rarely tapped into the resources of corporate  
26 America outside the utilities. Timothy Simon told you a little  
27 about what he was trying to do. We at Greenlining observed it,  
28 because we work closely with many major financial institutions,

1 and they are a key to the green revolution, and he understands  
2 it better than any other Commissioner, how to tap into their  
3 multi-billions in commitments and bring them here to the State  
4 of California.

5 I would say that -- well, I want to give you an  
6 example of his support. Twenty-one of our members asked to meet  
7 with him in Los Angeles in early February. The US Hispanic  
8 Chamber was there, the California Hispanic Chamber leadership,  
9 the California Asian Business Association, and many churches.  
10 They have written to you. You have received approximately 15  
11 letters our members, and they have been primarily Latino and  
12 Asian-American, expressing their strong support for a person who  
13 understands the nature of this multi-ethnic state.

14 And I would conclude with this. As Richard  
15 Polanco said, you are going to get balanced leadership here, and  
16 you are going to get a person with an inclusionary vision,  
17 something that is a rarity on any regulatory body, much less the  
18 PUC.

19 So, thank you.

20 CHAIRMAN PERATA: Thank you, sir.

21 I might just suggest, and I know a lot of you  
22 don't come here regularly, the only thing this board really has  
23 a hard time with is staying too late when something looks like  
24 it's a fait accompli. So, if you all just want to say who you  
25 are and what you're representing, that would be fabulous.

26 MS. HUFFMAN: Alice Huffman, State President of  
27 the NAACP and on the National Board of the NAACP.

28 We come not only to support but to ask for your

1 confirmation of Timothy Simon today.

2 Thank you, Mr. Chairman.

3 CHAIRMAN PERATA: Thank you very much.

4 MR. ASSAGAI: Mel Assagai for the Sacramento  
5 Black Chamber of Commerce, California Association of Urban  
6 League Executives, and the National Association of Women  
7 Business Owners.

8 We strongly urge this confirmation.

9 CHAIRMAN PERATA: Thank you.

10 MR. YIN: Mr. Chair and Members, C.C. Yin,  
11 Founder and Chair of API American Public Affairs Association,  
12 and also the owner of McDonald's.

13 I'm here to support Timothy Simon's appointment.  
14 Thank you very much.

15 CHAIRMAN PERATA: Thank you, sir.

16 MR. BROWN: Mr. Chairman, Angus Brown, Pastor of  
17 the Third Baptist Church, Chairperson of the Bay Area Ecumenical  
18 Pastors Conference, member of the National Board of the NAACP,  
19 and President of the San Francisco branch of the NAACP.

20 It takes two wings for a bird to fly, two wings  
21 for an airplane to stay in the air.

22 This gentleman, this quintessential gentleman has  
23 a balanced two wing approach to public service and is profoundly  
24 concerned about the least of those who are underserved in our  
25 society. And I appeal to all of you to please, pretty please,  
26 do the right thing.

27 [Laughter.]

28 MR. BROWN: Do the right thing with this



1 Commissioner, making sure of a fair utilities bill for  
2 everybody. Hopefully the day will come, even in the State of  
3 California, that everybody will be able to say I'm black I'm  
4 proud; I'm brown and I'm sound; I'm yellow and I'm mellow; I'm  
5 red but I ain't dead; I'm white but I'm all right.

6 [Laughter.]

7 CHAIRMAN PERATA: Yes, ma'am.

8 MS. ROOKER: Senator, Alexandra Rooker with  
9 Communication Workers of America, Local 9400, which, of course,  
10 I'm a little biased, but the most -- I represent the most  
11 important piece part of this, and that's the workers.

12 And I've often said that in the past, the PUC has  
13 been to consumers what the NRB has been to workers: not very  
14 receptive. But with Commissioner Simon, we have found a  
15 listening ear, and he's there for us to hear what really goes on  
16 behind those closed doors in those buildings, and what the  
17 workers actually are going through, and what happens to  
18 consumers.

19 So, I am very pleased to strongly support  
20 Commissioner Simon in this confirmation. Thank you.

21 CHAIRMAN PERATA: Thank you.

22 MR. PEREZ: Senator, my name is Jose Perez. I'm  
23 here representing the Latino Journal.

24 But also, I serve as the Chair of the California  
25 Utilities Diversity Council, and I've got to tell that we have  
26 met several Commissioners, not just here in California, but  
27 throughout the country, and this gentleman really gets it. He's  
28 the kind of guy that, you know, just makes an exceptional public

1     servant.

2                     And so, we're very happy to be here in support of  
3     his confirmation. Thank you.

4                     CHAIRMAN PERATA: Thank you.

5                     MR. JORDAN: Senator, Fred Jordan. I'm the past  
6     President and member of the board of the National Black Chamber  
7     of Commerce, a member of the board of the California Black  
8     Chamber, and I'm President of one of the Bay Area Chambers, and  
9     I'm a member of the Small Business Council of California, State  
10    Small Business Council.

11                    I just want to say this real quick. Barack Obama  
12    said that this is a defining moment. I say that this is a  
13    meeting point of eternity.

14                    This is a very unusual man here. He is very  
15    unusual. He's popular. He's capable. He's knowledgeable. He  
16    has all of the assets. He's a friend of small business. He's  
17    committed. And Senator Ashburn, he is honest.

18                    There is a saying that says -- I forgot who said  
19    it -- it says, those men of good intentions that move in earnest  
20    are not always aware of the consequences.

21                    He is a man of good intention, and I urge your  
22    support.

23                    CHAIRMAN PERATA: Thank you, sir.

24                    MS. AGBO: Senator, my name is Nwamakei Agbo, and  
25    I'm here representing the Ella Baker Center for Human Rights and  
26    Green For All. Both organizations committed to peace, justice  
27    and opportunity in creating pathways out of poverty into green  
28    jobs.

1 And as a person who benefitted from the  
2 scholarship from the conference on January 14th, I want to say  
3 that it was a beautiful conference. I travel around the nation  
4 and I speak, and rarely do I see an audience that reflects  
5 myself. So, to be able to attend this conference, to actually  
6 learn from it, and then to see my peers and other educators,  
7 other religious-based organizations from all areas of the  
8 community there was empowering and inspirational for the work  
9 that I'm doing.

10 So, we're here to support Timothy Alan. Thank  
11 you.

12 CHAIRMAN PERATA: Thank you.

13 MR. STONE: Good afternoon. Very quickly, I'm  
14 Aubry Stone, President and CEO of the California Black Chamber.

15 Hi, Roy. Good to see you.

16 I know Tim personally, but will say this, that  
17 he's already considered a champion in many African-American  
18 communities across the state, and that's rapidly growing to the  
19 point of legend.

20 And I think if you were to not confirm him, it  
21 would be interpreted as a direct affront towards our economic  
22 development within our community, and that's unforgiveable.

23 So, I do trust that you will concur with the  
24 belief that we have in our community and confirm his nomination.  
25 Thank you.

26 CHAIRMAN PERATA: Thank you, sir.

27 MS. ZARENDA: Good afternoon, Mr. Chair and  
28 Members of the Committee. My name is Nancy Zarenda, and I'm

1 here representing the Sacramento Hispanic Chamber of Commerce,  
2 and also my own business, the Spanish Language Academy.

3 I'm here to urge your support of Timothy Simon  
4 who has shown that he is serving the entire State of California  
5 in the languages that the people understand, and he will serve,  
6 protect, and provide consumer services so all Californians.

7 CHAIRMAN PERATA: Thank you.

8 Yes, ma'am.

9 MS. CARROLL: Good afternoon, Senators. I'm  
10 Theresa Taylor Carroll, a former legislative staffer, former  
11 lobbyist. And I am here for two reasons. One is because I've  
12 known Timothy Simon for over 16 years as family friends, as  
13 members of the legal community in California, and I know him to  
14 be a person of utmost honesty, integrity. And I believe that he  
15 has the capability to perform this position well.

16 I've been a former board member myself and city  
17 planning commissioner, and know that sometimes you have to make  
18 the tough decisions, but you have to be open to all sides, and  
19 then do what you think is right based on what you learn. And I  
20 think that Timothy will do that.

21 Thank you.

22 CHAIRMAN PERATA: Thank you.

23 MS. MERRYWEATHER: Good afternoon, Mr. Chair,  
24 other Members. My name's Ingrid Merryweather. I'm probably a  
25 representative of minority-owned business, women-owned  
26 businesses, small owned businesses, and from that perspective I  
27 can speak highly with respect to Commissioner, hopefully  
28 permanently, Commissioner Simon and ask that you confirm his



1 appointment.

2 Thank you.

3 CHAIRMAN PERATA: Thank you.

4 MS. BOSWELL-RAINE: We are Vernon Whitmore and  
5 Eleanor Boswell-Raine. We are the publishers of The Globe  
6 newspaper, and we are here representing the California Black  
7 Press Association. We represent 23 newspapers, 3 radios. We  
8 have a readership of about 2 million people.

9 We are here because we firmly believe that  
10 Timothy Simon has the vision and dedication to consumers,  
11 particularly low-income minority residents. We believe that he  
12 will make a meaningful and positive impact in the State of  
13 California and should be confirmed as a Commissioner for the  
14 California Public Utilities Commission.

15 CHAIRMAN PERATA: Thank you.

16 MR. BRADY: Good afternoon, Senators. My name is  
17 James Brady, Vice Chair of the California Black Chamber of  
18 Commerce.

19 And I'm here to ask for your support and  
20 confirmation for my friend, Tim Simon.

21 Thank you.

22 CHAIRMAN PERATA: Thank you.

23 MS. GONZALEZ: Hello. My name is Thalia  
24 Gonzalez, and I am the Senior Legal Counsel at Greenlining.

25 So, I wear kind of a different hat right now. As  
26 the champion at Greenlining and taking over a lot of the  
27 responsibility from Bob Gnaizda, as he departs and begins that  
28 departure, I'm looking forward to six years of working with

1 Commissioner Simon.

2 And I know that I will not always agree with him,  
3 but I also know that his staff has been readily available to me,  
4 to the other than attorneys that work at Greenlining, and that's  
5 been a critical element because he is deeply committed to  
6 economic development in this state.

7 And as a member and as a sponsor of the summit,  
8 and as a nonprofit organization, we were asked to participate in  
9 it, and to me the representation that you saw not just at that  
10 summit but through his leadership has been quintessential and  
11 really reflects who he will be in the future, and I hope that he  
12 will continue to be as a Commissioner.

13 CHAIRMAN PERATA: Thank you.

14 Yes, sir, in the middle.

15 MR. JOHNSON: Mr. Chairman, my name is Will  
16 Johnson. I'm a business, small business owner. I'm part of --  
17 the National Association of Regulatory Utility Commissioners  
18 have an ad hoc committee called UMAP, which stands for Utility  
19 Market Access Partnership.

20 I've been involved with utility companies for the  
21 past 36-37 years or so, and Commissioner Simon has been very  
22 helpful in assisting our group, which is designed to give small  
23 disadvantaged businesses, disabled veterans, opportunities in  
24 the procurement area with utility companies.

25 He's been a regular participant with our  
26 organization, and I strongly support him. Thank you.

27 CHAIRMAN PERATA: Thank you.

28 Yes, sir.

1 MR. DAVIS: Good afternoon, President Perata and  
2 Senators. My name is Keenan Davis. I'm the General Counsel of  
3 a telecommunications company called 01 Communications, which is  
4 headquartered here in Sacramento and has facilities throughout  
5 the State of California.

6 I'm also a board member of a group called CALTel,  
7 the California association of competitive telephone companies,  
8 telecommunications companies, and have met with Commissioner  
9 Simon in that regard.

10 And I have found him to be fair, honest, and  
11 humble, interested to hear our position. That's a rarer and  
12 rarer thing. We used to have about 40-some members in our  
13 group. Now we've got somewhere in the neighborhood of 25 or so  
14 because of the status of telecommunications regulation in the  
15 State of California.

16 So, we have found Commissioner Simon to be fair,  
17 and to be open to our perspective as he is open to -- seems to  
18 be open to all perspectives. What more could you ask for in a  
19 regulator?

20 We'd urge you to confirm him to serve out the  
21 balance of his term. Thank you.

22 CHAIRMAN PERATA: Thank you --

23 We're going to take a little break so her fingers  
24 can survive.

25 [Thereupon a brief recess was taken.]

26 CHAIRMAN PERATA: We're going to reconvene.

27 Go ahead, Roy.

28 MR. PEREZ: Mr. Chairman, Roy Perez with the

1 California Hispanic Chamber of Commerce.

2 Supports Mr. Simon.

3 CHAIRMAN PERATA: Thank you, sir.

4 MR. HARRIS: Mr. Chairman, Robert Harris, former  
5 President of the National Bar Association, representing today  
6 the California Association of Black Lawyers, the Charles Houston  
7 Bar Association, and the NAACP branch in Oakland.

8 We submit our testimony in writing.

9 CHAIRMAN PERATA: Thank you, sir.

10 MR. HARRIS: In support of the confirmation.

11 MR. MARCUS: Members, Matthew Marcus. I'm here  
12 on behalf of Dana Appling, the Director of the Division of  
13 Ratepayer Advocates, in support.

14 CHAIRMAN PERATA: Thank you, sir.

15 MR. JACK: Mr. Chairman, James Jack on behalf of  
16 CALTel, the California Association of Competitive  
17 Telecommunications Companies, in support.

18 Thank you.

19 CHAIRMAN PERATA: Thank you.

20 MR. PEREZ: Adrian Perez, President of  
21 CalMagazine.com, the first all Latino internet TV, and we are in  
22 full support.

23 CHAIRMAN PERATA: Thank you.

24 MR. JACKSON: Bishop Bob Jackson, Pastor of Acts  
25 Full Gospel Church of God and Christ in Oakland, California,  
26 also the President of the Pastors of Oakland Association, also  
27 the Board Chairman for the Oakland African-American Chamber of  
28 Commerce, in full support of this appointment today of



1 Mr. Simon.

2 CHAIRMAN PERATA: Thank you.

3 MR. McFETRIDGE: Mr. Chairman and Members, Duncan  
4 McFetridge, representing the California Coalition of Utility  
5 Employees, in strong support.

6 CHAIRMAN PERATA: Thank you.

7 MR. CONRAN: Jim Conran, President of Consumers  
8 First, and former Director of the Department of Consumer  
9 Affairs, in strong support of Timothy Simon.

10 CHAIRMAN PERATA: Thank you.

11 MR. STEVENSON: Mr. Chairman, my name is Dave  
12 Stevenson. I am with California American Water Company, and  
13 I'm here representing California Water Association.

14 And we are in strong support of Commissioner  
15 Simon.

16 CHAIRMAN PERATA: Thank you.

17 MR. HEALD: Mr. Chair and Members, my name is  
18 Larry Heald. I'm with Oakland Citizens Committed for Urban  
19 Renewal, in support of Timothy Alan Simon.

20 CHAIRMAN PERATA: Thank you.

21 Anyone here in opposition? Anybody here that  
22 would just like to address this? Come on up.

23 This is your maiden voyage.

24 MR. TONEY: Thank you.

25 CHAIRMAN PERATA: Congratulations.

26 MR. TONEY: Thank you very much, Senator and  
27 Members of the Senate Rules Committee.

28 My name is Mark Toney. I serve as Executive

1 Director The Utility Reform Network.

2 On behalf of residential and small business  
3 consumers across the State of California, TURN wishes to submit  
4 this letter of concern confirming the confirmation Timothy Simon  
5 as a member of the California Public Utilities Commission.

6 Let it be clear that TURN has not taken a  
7 position to oppose the confirmation, but let me be equally clear  
8 that we have not taken the position to support the confirmation  
9 either.

10 The big picture before the Committee today, far  
11 greater than the confirmation of Commissioner Simon, is the  
12 unfulfilled need for a true consumer champion to be appointed to  
13 the CPUC. California ratepayers need the leadership of the  
14 State Senate to appoint consumer champions to rein in a  
15 California Public Utilities Commission that has gone rogue. A  
16 rogue commission that sells out the interests of California  
17 consumers in favor of corporate interests, that betrays its  
18 obligation to exercise the will of the California State  
19 Legislature, that undermines the judicial integrity of its own  
20 civil service professionals.

21 You know, the historic role of utility regulatory  
22 commissions is to serve as consumer protection agencies, not  
23 impartial arbiters between competing interest groups. Utility  
24 corporations don't need a commission to protect their interests,  
25 not when they employ armies of lobbyists, deploy legions of spin  
26 doctors, and make millions in campaign contributions.

27 But California consumers, without access to these  
28 resources, depend upon the CPUC to protect their interests.

1                   This current rogue commission has sold out the  
2 interests of California consumers in favor of corporate  
3 interests in the 2007 PG&E general rate case, when it caved in  
4 to corporate interests and rejected a settlement that would have  
5 saved consumers \$160 million between 2007 and 2010. Instead,  
6 the CPUC voted to divert that \$160 million into the pockets of  
7 PG&E's shareholders.

8                   This commission also sold out California  
9 consumers last September, when it decided that utility company  
10 shareholders could pocket \$323 million in profits over three  
11 years for successful energy efficiency activities, even though  
12 ratepayers alone pay for energy efficiency programs.

13                  To add insult to injury, the CPUC caved in to the  
14 utility complaints and modified the ruling to allow utility  
15 companies to keep the profits, even if the energy efficiency  
16 programs achieve only 65 percent of their stated goal.

17                  The commission also sold out the interests of  
18 California consumers when it deregulated most telecom companies  
19 in its uniform regulatory framework decision, the Earth  
20 Decision, when they promised that deregulation and market forces  
21 would lower prices, when instead within nine months of that  
22 decision, AT&T had raised its rates for select custom calling by  
23 50 percent, local directory assistance by 117 percent, fees for  
24 return checks by 276 percent, and the penalty for having an  
25 unlisted number by 446 percent.

26                  Rates for residential, basic residential service  
27 have not risen, but only because the Legislature, at TURN's  
28 urging, capped those rates to prevent video service cost

1 subsidy. That rate freeze expires on January 1st, 2009, and we  
2 fully expect the large telephone companies to take full  
3 advantage of the opportunity and raise rates.

4 These are but three examples of the lack of  
5 accountability to California consumers. But the CPUC has done  
6 little better in fulfilling its obligation to exercise the will  
7 of State Legislators. This current rogue commission has  
8 betrayed its obligation to exercise the will of the State  
9 Legislature by voting four-to-one in May, 2007 to reopen a rule  
10 making on direct access, in direct defiance of a letter sent  
11 just days before strongly urging them to reject the proposed  
12 rule making that was signed by Senate President Perata, Assembly  
13 Speaker Nunez, Senate Energy, Utilities and Communications Chair  
14 Kehoe, and Assembly Utilities Committee Chair Levine.

15 While Commissioner Simon dissented on this vote,  
16 it is the consequences of the vote by the other Commissioners  
17 who are poised to reopen Pandora's Box of direct access.

18 As we speak, this commission is working behind  
19 closed doors, betraying its obligation to exercise the will of  
20 the State Legislature by ignoring the 2005 legislative directive  
21 to solicit broad public input when major changes for consumers  
22 are being considered, such as with advanced technologies  
23 proceeding, by once again refusing to solicit broad public input  
24 on proposed redefinition of basic phone service so profound that  
25 customers are in jeopardy of losing unlimited local phone calls,  
26 free incoming calls, or even access to local 9-1-1 emergency  
27 call centers.

28 In addition to this disregard of consumer and



1 legislative interests, this PUC has reversed the ruling of its  
2 own administrative law judges, highly skilled civil servants who  
3 are professionally trained to fairly weigh the positions of all  
4 parties and determine the outcome that best serves the public  
5 interest. This current commission did that when they overruled  
6 an administrative law judge's proposed decision to reduce  
7 payments to qualifying facilities, those industrial  
8 co-generators such as big oil companies, and adopted a formula  
9 costing California ratepayers an additional \$200 million a year  
10 above the cost that was proposed by their own administrative law  
11 judge.

12 This commission also undermined judicial  
13 integrity of its own civil service professionals in 2005, when  
14 it overruled an administrative law judge's proposed decision in  
15 the SBC-AT&T merger case, to share \$330 million in merger  
16 benefits with ratepayers. Instead, they caved in to corporate  
17 pressures to exempt the utilities from any sharing requirements.

18 The Public Utility Commission is one of the most  
19 powerful agencies in California, overseeing huge companies and  
20 industries that directly affect the lives of all Californians on  
21 a daily basis. Yet, the most recent appointees have little in  
22 the background of pro-consumer experience. The business sector,  
23 the energy sector, the telecommunications industries, the  
24 financial markets, their interests have long been and continue  
25 to be well represented among this commission.

26 What the state needs, what the citizens deserve,  
27 is an appointee who brings to the position a demonstrated  
28 ability to put the consumers first, a consumer champion who

1 recognizes that free markets are not necessarily fair markets,  
2 someone who understands that regulation exists because  
3 competition by itself does not adequately protect consumers.

4           There are any number of qualified candidates that  
5 would bring substantial experience in representing California  
6 consumers to the commission, were the Governor and Senate  
7 sufficiently committed to appointing and confirming someone  
8 with a long-standing experience as a vigorous advocate and a  
9 track record of winning victories for California consumers.  
10 There are many groups, including TURN, UCAN, The Greenlining  
11 Institute, the Latino Issues Forum, Consumer Federation of  
12 California, and a myriad of other groups who are regularly  
13 active before the commission that would be happy to work with  
14 the Governor's Office, that would be happy to work with the  
15 Senate, to identify a candidate who would represent true  
16 consumer interests.

17           In sum, while TURN does not oppose the  
18 confirmation of Commissioner Timothy Simon, TURN believes that  
19 the Senate should be dismayed at the ongoing failure of the  
20 Governor's Office to appoint a true consumer champion that the  
21 commission likes -- lacks. TURN strongly urges the Senate to  
22 exercise its leadership and send a very clear signal to the  
23 Governor's Office that, from this date forward, a failure to  
24 appoint a consumer champion to the CPUC will doom the nominee's  
25 prospects for confirmation not a whole year from the date of  
26 their appointment, but that immediate action to deny  
27 confirmation would be initiated.

28           California consumers are counting on the

1 leadership of the Senate to rein in a rogue, out of control  
2 California Public Utilities Commission and to begin to restore  
3 its accountability to consumers, to Legislators, and to their  
4 own staff by confirming only consumer champions for all future  
5 appointments to the commission.

6 Thank you for your consideration.

7 CHAIRMAN PERATA: Thank you, sir.

8 I would just point out that it's a little  
9 discomfoting to have TURN challenge the commitment of the  
10 Senate to consumer advocacy when you haven't taken a position  
11 yourself.

12 So, I know you're new on the job, but you might  
13 tell the folks back home.

14 MR. TONEY: I will take that under advisement,  
15 Senator. Thank you very much.

16 CHAIRMAN PERATA: So, you thought you were just  
17 going to go skate out the door, huh, Tim?

18 This has been very enlightening and enjoyable,  
19 and I appreciate everyone who has come up here today. I did not  
20 mean to truncate your comments about Mr. Simon. You can put  
21 them in glowing letters of congratulations to him.

22 But it is unusual for us to have an opportunity  
23 to let people from the community come up and speak their mind,  
24 and show support, so I'm grateful to all of you who've been  
25 here.

26 I must say that all of my dealings with Mr. Simon  
27 have been across the table, so I never had a chance to listen to  
28 him orate. But you certainly have a powerful and commanding

1 speaking style, which really goes to the question of advocacy.

2 I'm not sure I much understand how the PUC  
3 operates. What I do understand is probably not very favorable,  
4 but I do think with regard to the potential for you to  
5 articulate and help organize some of the concerns that you  
6 expressed, it's a very apt position to be in.

7 I notice that a lot of the written comments that  
8 were given to us said that you were a friend and defender of  
9 working people and those who need a voice. And you certainly  
10 have that ability, you have that voice.

11 And I hope that while people look at that  
12 commission, and we've heard frequently that it is devoid of  
13 strong consumer advocacy, there are people who will point out  
14 the time, a suggestion that that's the idea of advocacy, is to  
15 look what time it is. It's really more than that.

16 You touched on a number of things here, and  
17 you've got a very nice, long career ahead of you, and I'm sure a  
18 Democrat will be the one to reappoint you.

19 [Laughter.]

20 CHAIRMAN PERATA: I hope you're listening.

21 [Laughter.]

22 CHAIRMAN PERATA: In all events, I believe that  
23 you certainly see the things that need to be done, and I would  
24 give you God speed with your work.

25 I think there are many people around here that  
26 will benefit by simply your paying close attention to the people  
27 who often get no attention paid.

28 I also want to mention that there was a letter



1 submitted by the other action network, Utility Consumers' out of  
2 San Diego. It's quite lengthy and quite specific. The  
3 gentleman who wrote it, Michael Shames, Executive Director, is  
4 very well thought of. I'm sure you know him.

5 It was actually addressed to Chris Kehoe, the  
6 Senator from the committee in the Senate, and asking her -- and  
7 I will endorse that -- that she explore some of the criticisms.  
8 They're not of you. They're of the commission.

9 But I would appreciate it if you would look at  
10 that letter and, I don't think you've seen it yet.

11 MR. SIMON: No, I haven't.

12 CHAIRMAN PERATA: Just look at it, because I  
13 think there are many things there that were just mentioned that  
14 are underscored. And as I look at it, if you see it from two  
15 sides of the state, there might be some things to comment on.

16 I think, again, your advocacy could be very  
17 beneficial with many of these things.

18 In the final analysis, there's very little that  
19 we, as a legislative body, can do to effect what you do. We  
20 write letters, we rail. It's easy to kick somebody else around,  
21 but it really comes from within.

22 And I believe that the number of changes that  
23 have occurred on your commission, I'm mindful that I think there  
24 might be at least one or perhaps two changes within the near  
25 future, you'll be a veteran before very long, and I think your  
26 experience in politics, and your willingness to engage and admit  
27 will be well served.

28 I wish you well with that.

1 SENATOR ASHBURN: Motion.

2 CHAIRMAN PERATA: We have a motion to approve.

3 Please call the roll.

4 SECRETARY WEBB: Cedillo.

5 SENATOR CEDILLO: Aye.

6 SECRETARY WEBB: Cedillo Aye. Dutton.

7 SENATOR DUTTON: Aye.

8 SECRETARY WEBB: Dutton Aye. Padilla.

9 SENATOR PADILLA: Aye.

10 SECRETARY WEBB: Padilla Aye. Ashburn.

11 SENATOR ASHBURN: Aye.

12 SECRETARY WEBB: Ashburn Aye. Perata.

13 CHAIRMAN PERATA: Aye.

14 SECRETARY WEBB: Perata Aye. Five to zero.

15 CHAIRMAN PERATA: Congratulations.

16 MR. SIMON: Thank you very much.

17 [Applause.]

18 CHAIRMAN PERATA: We have one more appointee.

19 Mr. Moresi, would you like to come forward.

20 Don't misconstrue everybody leaving, please.

21 MR. MORESI: Actually, I'm relieved with

22 that.

23 Good afternoon, Mr. Chairman, Senators.

24 The subject of workers' compensation seems to

25 have cleared out the room.

26 [Laughter.]

27 MR. MORESI: I don't have anybody to introduce

28 me, so I'll do it myself, if you don't mind.

1                   My name is Alfonso Moresi. I'm a native of San  
2                   Francisco, a public school product, Balboa High School in 1964,  
3                   University of San Francisco in 1968, and after a little hiatus  
4                   for skiing, law school at Golden Gate University.

5                   I started out in the business as a defense  
6                   attorney with Employers Insurance of Wausau for one year,  
7                   Continental Insurance for one year, and then I joined the firm  
8                   of Sedgwick, Detert, Moran & Arnold. I became a partner there,  
9                   and in 1985, five of us left the firm to start our own firm, and  
10                  that's Laughlin, Falbo, Levy & Moresi, which I'm proud to say  
11                  became the largest defense firm in the State of California. At  
12                  one point in time, we had 153 attorneys. I left, and they had  
13                  152.

14                 That number's changed somewhat because the  
15                 Legislature has seen fit to amend the workers' compensation  
16                 system, and it has impacted the workers' compensation  
17                 community.

18                 I've been doing this job for eleven months. I  
19                 enjoy it. Actually, a little anecdotal story, after I'd been  
20                 there about a year -- not even a year, I'm sorry -- after I'd  
21                 been there about a month, my wife said, "How do you like the  
22                 job?"

23                 I said, "I love it. It's fun."

24                 It's the first time I'd had fun going to work in  
25                 a long time. As you know in private practice, the billable  
26                 hours, the telephone calls, the e-mails.

27                 This is a judicial position, and I get to  
28                 exercise my intellect again, instead of hustling business and

1     trying to chase the -- like the squirrel in the cage -- the  
2     billable hour. So, I've enjoyed it.

3             I think we've done a good job in the year I've  
4     been there. As I said in the letter I wrote you, I've been very  
5     public in this position. I've spoken at a number of  
6     conferences, both defense, applicant, physicians, trying to  
7     explain 899 and our role as commissioners, as a judicial body,  
8     to interpret the legislation that you saw fit to pass in 2004.

9             It has been difficult because the rules have  
10    changed. You get used to doing something same way; 34 years of  
11    practice, you do it the same way. You know what apportionment  
12    is. You know what permanent disability is.

13            Those rules have all been changed, and it's been  
14    a difficult task, and we do our utmost to see fit that the  
15    intent of the Legislature and the people of the State of  
16    California is satisfied.

17            Any questions?

18            CHAIRMAN PERATA: A man after my own heart.

19            Is it appropriate for you to comment on the law?

20            MR. MORESI: I can comment on, perhaps, things  
21    that we've interpreted. I can give you some anecdotal  
22    observations.

23            CHAIRMAN PERATA: Really, it's a question of  
24    enforcement, and we've heard different things.

25            I am not satisfied, but it's free play.

26            MR. MORESI: Sure.

27            One of the questions you asked, and I think it's  
28    a very important question, and that is how has permanent



1 disability impacted the California worker?

2 Keep in mind, we have cases before us that are  
3 dealing with the interpretation of the new schedule. I happened  
4 to attend a conference where Carrie Nevans spoke. It was at the  
5 Board of Governors for the California Applicants Attorneys  
6 Association. And she did say that statistics are showing that  
7 there's been a decrease of approximately 25 to 30 percent in  
8 permanent disability benefits to the injured worker.

9 I see it. I see it everyday. I'll give you an  
10 example.

11 Commissioner Chairman Miller, Chairman of the  
12 Board, came to me with a case that I happened to be on the panel  
13 with him and he said, "This is an example of what 899 has done."

14 Under the old rating schedule, this individual  
15 would have received 65 percent permanent disability, but under  
16 the new schedule, they receive 9 percent permanent disability, a  
17 dramatic difference.

18 It's not to say that the old schedule was  
19 correct. It probably wasn't. It may have been too high.

20 But that's the kind of thing we're seeing.

21 One of the other things that I've heard about  
22 that I haven't seen, now that we use the AMA Guides to  
23 Impairment before we go into the diminished future earnings  
24 capacity calculation, the doctor has to make a determination as  
25 to the level of impairment. Well, sometimes the guides don't  
26 provide for impairment. They can say that the individual has  
27 zero percent impairment, yet the doctor in the same breath can  
28 say they can't go back to their usual and customary job.

1                   What does that do to the individual? It leaves  
2 them with no permanent disability, no rehabilitation because the  
3 Legislature has seen fit to do away with rehabilitation, and  
4 those people are caught in the middle. And I see that, and  
5 that's a personal anecdotal observation.

6                   What can be done about it, I defer to you, and I  
7 defer to the administration.

8                   CHAIRMAN PERATA: Thank you.

9                   Alex.

10                  SENATOR PADILLA: A little bit of a follow-up,  
11 and maybe a broader comment on your part about the workers'  
12 compensation post the 2004 "reforms," how they're working, how  
13 they're not working.

14                  I know the previous question was specific to  
15 permanent disability. I don't know if you have an opinion as to  
16 whether the current rates are sufficient?

17                  MR. MORESI: As I told Senator Perata, I won't  
18 comment on the judicial thing, but I'll give you my observation  
19 of 34 years of practice.

20                  I believe reform was necessary.

21                  SENATOR PADILLA: I don't think anybody disagrees  
22 with that.

23                  MR. MORESI: Right, but what has happened with  
24 the reform is a great deal of uncertainty. And that's where the  
25 boards comes in and tries to interpret the law and provide some  
26 certainty to the community. And some of it is rather harsh when  
27 one compares the old law to the new law. It is. There's just  
28 no getting around it.

1           Before 899, if an injured worker had been on the  
2 job for 30 years and hurt their back, they received the full  
3 level of permanent disability.

4           Right now they don't, because we have what is  
5 known as apportionment. We apportion to cause. If a doctor  
6 should say 50 percent of that disability is the result of the  
7 ongoing degenerative process in one's spine, or knee, or ankle,  
8 or whatever, then we -- and I say "we," the workers'  
9 compensation judges, and the Appeals Board, and the Courts of  
10 Appeal -- have said that we deduct that disability by 50  
11 percent. That's harsh. That's harsh, and it's something that  
12 wasn't done before.

13           The other thing is, the litigation has increased  
14 at the Workers' Compensation Appeals Board because of the number  
15 of appeals. We have representatives from CAAA here. They can  
16 tell you that they're filing more and more appeals with the  
17 Board, which in turn go to the Court of Appeals.

18           We've provided the committee with the statistics  
19 on that, and I think they bear out the fact that there is a  
20 significant amount of litigation at the appellate level.

21           The litigation, as I understand -- again, this is  
22 from Carrie Nevans, the Administrative Director -- she said that  
23 the numbers of filings are down at the local district offices of  
24 the Workers' Compensation Appeals Board, and that may have  
25 something to do with the fact that the individuals are  
26 frustrated by the process.

27           Applicant's attorneys are not in as great a  
28 number as they used to be. I think CAAA's membership has

1 dropped. It's very difficult to represent injured workers when  
2 the end result may be a relatively minor recovery on their  
3 behalf.

4 SENATOR PADILLA: Your comment earlier about the  
5 need for reform, obviously in 2004, everybody agreed.

6 MR. MORESI: Right.

7 SENATOR PADILLA: We're in 2008. Are we out in  
8 the clear, or do we need more reform?

9 MR. MORESI: I think you need to look at the  
10 numbers.

11 SENATOR PADILLA: And what would more reform look  
12 like?

13 MR. MORESI: Well, that I'm going to leave you,  
14 but I would certainly think that you have to look at permanent  
15 disability. I believe that --

16 SENATOR PADILLA: Any other elements of our  
17 system that would need revisiting?

18 MR. MORESI: I think when you revisit permanent  
19 disability, apportionment should be looked at.

20 I can't comment upon some of the things that are  
21 before us, because some of the concepts are there. Some of the  
22 concepts -- I'll tell you what some of the concepts are.

23 For example, age discrimination. A person who is  
24 60 years old and gets apportionment to degenerative process, is  
25 that age discrimination? Because those of us who are 60, I'm  
26 sure -- I know for a fact, the MRI on my back shows that it's  
27 degenerated. Is it a natural process if you're a hod carrier,  
28 or is it a result of carrying hod, cement sacks, for 50 years?



1 I don't know. And that's something that one has  
2 to defer to you and the administration.

3 SENATOR PADILLA: Let me read a section of the  
4 Labor Code, Section 3202:

5 "This division and Division 5  
6 shall be liberally construed by  
7 the courts with the purpose of  
8 extending their benefits for the  
9 protection of persons injured in  
10 the course of their employment."

11 MR. MORESI: Right. That's the liberal  
12 interpretation statute.

13 Then you go to 3202.5, and it says a case must be  
14 proved by the preponderance of the evidence. Hence, you're in a  
15 quandary.

16 When I first started practicing, there was no  
17 3202.5. I guess the best way to describe that is, as my torts  
18 professor explained to me, if you went into court with a "res  
19 ipsa loquitur" case, you went in with an empty briefcase.

20 You've got to have just a little bit more than  
21 3202. And 3202 is used extensively. It's in the back of my  
22 head every time I look at a case. Every time we -- as the  
23 statistics show, we review about seven to ten cases per day.  
24 It's a very, very busy position. And I can't escape -- that  
25 can't escape from my mind that it's there. And if all things  
26 equal, the ball is in the applicant's court.

27 SENATOR PADILLA: Obviously, The merits of the  
28 case are the merits of the case.

1           Systemic question, are you provided materials,  
2 background information you need, on a timely basis? Are there  
3 workload concerns for yourself or support staff?

4           MR. MORESI: Oh, the support staff is fabulous.

5           One of the things I was concerned about, after  
6 having practiced 34 years and been with the same firm for 25  
7 years, and the same partners for that amount of time, it was a  
8 big change. And I went to this job really worried about it.

9           And I got there, and I found the staff was  
10 fabulous: secretarial help, the clerical help, the deputies,  
11 and the fellow commissioners. I was at home, felt like I was  
12 home in a week, and it was great.

13           SENATOR PADILLA: And last question, the proposed  
14 budget cuts by the Governor, how would, if implemented, those  
15 affect you and your ability to do your job?

16           MR. MORESI: I don't think it affects us. We're  
17 user funded, and we're not part of the General Fund. It's an  
18 assessment against all carriers and self-insureds.

19           SENATOR PADILLA: Thank you.

20           CHAIRMAN PERATA: We could change that.

21                       [Laughter.]

22           MR. MORESI: No, don't. It took us awhile to get  
23 it.

24           CHAIRMAN PERATA: Any other questions?

25           I don't think you have any family here.

26           MR. MORESI: Yeah, let me explain that.

27           They were all coming up. We had a -- I have a  
28 89-year-old mother-in-law who had a little emergency, so my wife

1 had to stay home and take care of her.

2 My son is skiing in Chamonix, France for the  
3 season. And my daughter's back in Missoula with her boyfriend.

4 CHAIRMAN PERATA: It's genetic, that skiing.

5 MR. MORESI: Yeah, it is. It was a mistake I  
6 made, putting them on the Squaw Valley Ski Team as youngsters.

7 CHAIRMAN PERATA: Anyone in support? Opposition?  
8 Motion?

9 SENATOR ASHBURN: Motion.

10 SENATOR CEDILLO: So move.

11 CHAIRMAN PERATA: We have a motion to approve.  
12 Call the roll, please.

13 SECRETARY WEBB: Cedillo.

14 SENATOR CEDILLO: Aye.

15 SECRETARY WEBB: Cedillo Aye. Dutton.

16 SENATOR DUTTON: Aye.

17 SECRETARY WEBB: Dutton Aye. Padilla.

18 SENATOR PADILLA: Aye.

19 SECRETARY WEBB: Padilla Aye. Ashburn.

20 SENATOR ASHBURN: Aye.

21 SECRETARY WEBB: Ashburn Aye. Perata.

22 CHAIRMAN PERATA: Aye.

23 SECRETARY WEBB: Perata Aye. Five to zero.

24 CHAIRMAN PERATA: Congratulations.

25 MR. MORESI: Thank you, Senators.

26 CHAIRMAN PERATA: On the East Bay, we're called:  
27 More-ESS-zee.

28 MR. MORESI: More-RAY-zee. You've got to roll

1 that "R.

2 CHAIRMAN PERATA: We're slow.

3 MR. MORESI: My father was from Lugano,  
4 Switzerland, and he used to say, "You can call me anything, but  
5 don't call me Italian."

6 [Laughter.]

7 MR. MORESI: But then again, my mother's  
8 Sicilian.

9 CHAIRMAN PERATA: So she's not Italian either.

10 MR. MORESI: That's absolutely right. That's  
11 what everybody says.

12 CHAIRMAN PERATA: Congratulations.

13 MR. MORESI: Thank you.

14 [Thereupon this portion of the  
15 Senate Rules Committee hearing  
16 was terminated at approximately  
17 3:47 P.M.]

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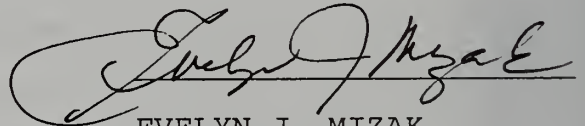
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 22<sup>nd</sup> day of February, 2008.

  
EVELYN J. MIZAK  
Shorthand Reporter

## APPENDIX

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*GeM*

**Communications  
Group**

**Gwen Moore  
President**

Senator Don Perata  
Chair of Senate Rules Committee  
State Capitol, Room 205  
Sacramento, CA 95814

Dear Senator Perata:

This letter is written to strongly urge the confirmation of Timothy A. Simon to the California Public Utilities Commission. As a member of the California State Assembly I served for 13 years as the Chair of the Utilities and Commerce Committee with the responsibility of oversight of the PUC and California Utilities. During that time I had the opportunity to work with many Commissioners and from my experience I have found the most successful commissioners were those who could strike the balance between the interest of consumers and the interest of the Utilities. Mr. Simon during the time he has served has demonstrated that ability.

I have had the opportunity to serve on several panels and workshops with Mr. Simon and found him to be extremely knowledgeable about utility issues, very sensitive to consumer concerns and to possess the ability to craft meaningful solutions to problem areas. His understanding of the issues combined with his keen insight and intellect is much needed as the Commission seeks to deal with the impact of recent attempts to restructure the Telecommunications and Energy Industries. It is very clear that he has the interest of consumers in mind as reflected by his involvement in out reach programs, community activities and particularly his advocacy of small businesses. He has been successful in working out agreements between Utilities and Consumer groups. As a result he has garnered the support and respect of numerous consumer groups, community leaders and community based organizations. Mr. Simon has also taken on the important leadership role of ensuring the participation of Minorities, Women and Disabled Veterans in accord with General Order 156 the Commission's billion dollar Utility Procurement Program.

I strongly support Mr. Simon and believe his confirmation will be a win for all Californians.

Sincerely,

*Gwen Moore*

Cc: Members of Senate Rules Committee



# 1954-55

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# CALIFORNIA LEGISLATURE

## MEMBERS

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VICE-CHAIR

GILBERT CEDILLO

ROBERT DUTTON

ALEX PADILLA



GREGORY SCHMIDT  
SECRETARY OF THE SENATE

NETTIE SABELHAUS  
APPOINTMENTS DIRECTOR

## SENATE RULES COMMITTEE

DON PERATA  
CHAIRMAN

January 2, 2008

J. Alfred Smith, Sr.

Dear Mr. Smith:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the Board of Governors of the California Community Colleges on February 20, 2008. We request that you appear. The meeting will begin at 1:30 p.m. in Room 113 of the State Capitol.

We have prepared the following questions to which we would appreciate your written responses. Please provide your responses by January 25, 2008. We would also like to receive an updated Form 700, Statement of Economic Interest, by January 25<sup>th</sup>.

### Goals and Responsibilities

The California Community College System provides educational, vocational, and transfer programs to more than 2.5 million students. It is the largest system of higher education in the world and is comprised of 72 districts and 109 campuses.

1. *Please provide a brief statement outlining the goals you hope to accomplish while serving as a member of the Board of Governors. How will you measure your success?*
2. *As a board member, what training have you received for your position? What conflict of interest training have you received? From whom do you seek advice on potential conflicts?*

## **Preparing for the Future**

In January 2006 the California Community Colleges Board of Governors approved a long-term strategic plan intended to guide system priorities and investments. Among its objectives the plan seeks to improve student access and success and enhance the value the colleges provide to students and the state. The plan establishes goals, a common set of strategies, implementation measures, and methods for assessing implementation.

3. *What are the biggest challenges within your strategic plan?*
4. *How does the board monitor and report on the implementation phase of the system's strategic plan? Does the board have the authority to intervene if sufficient progress is not made?*
5. *Sometimes systemwide state policy may conflict with goals established by local community colleges. What should be done to balance the need of addressing long-term strategic systemwide goals with locally driven priorities?*

## **Student Fees and Affordability**

The 2006 Budget Act reduced community college student fees from \$26 to \$20 per semester unit. Revenues from student fees in the community college system are the lowest in the nation. The board of governors administers an enrollment fee waiver program that was created in 1984 as a locally run program for low-income students.

Approximately 52 percent of full-time community college students have their fees waived due to financial need. A recent report by the National Center for Public Policy and Higher Education found that fees make up less than 5 percent of the costs for community college students. The report also found that California's community college students are less likely to apply for and receive federal financial aid than their counterparts in other states.

6. *Many community college students, especially those who receive a board of governors' fee waiver, frequently do not complete the free application for student aid form, making them ineligible to receive state and federal financial aid. Should the board act to increase the number of students who complete the free application for student aid form? If so, what can be done?*
7. *Should there be a long-term community college student fee policy? If so, what should its key features be?*

8. *In its report, the National Center for Public Policy and Higher Education recommended a gradual increase in community college fees, with the new fee revenue used in part to improve financial aid services. Do you believe this recommendation has merit? Why or why not?*

### **Developing Basic Skills of Community College Students**

The development of strong basic skills is the foundation for student success at a community college. Currently it is estimated that at least 75 percent of all incoming community college students require remediation of basic skills development to complete college-level English, and about 90 percent arrive unprepared for college-level math. The 2007 Budget Act includes a permanent redirection of \$33 million in base funding for basic skills enhancement. In addition to this ongoing funding for the basic skills initiative, another \$33 million in one-time carryover funding from the prior year is available to the community college system in 2007-08 for similar purposes.

9. *Is the board acting to ensure that more community college students are completing basic skills classes? Is the board acting to ensure that more students are moving into degree-applicable coursework, if this is the student's goal? How and how do you track students' progress?*
10. *What strategic direction is the board providing the Chancellor's Office as it develops the criteria for dispersing funds specifically set aside for basic skills education? Will the board measure whether districts are using these funds to target the least prepared students and how would you measure and track that?*

### **Student Success**

One of the community colleges' strategic goals is to increase completion rates among community college students by promoting college readiness as early as possible. A recent report by the Institute for Higher Education Leadership and Policy found that in California less than one-quarter of degree- or transfer-seeking community college students actually earned a college degree or certificate, or transferred to a four-year institution within six years.

11. *What is the board doing to encourage colleges to work with K-12 schools to align educational standards, assessments, and coursework that will better prepare students for successfully completing a community college education?*
12. *Currently all districts determine their own academic standards, which can vary in academic rigor from campus to campus. Assessment and placement are voluntary, as practiced at many colleges across the system as well. Is the board encouraging*



*colleges to begin using a uniform academic standard for assessing college readiness? Do you believe there is a role for the board in addressing assessment and placement policies? If so, what should it be?*

13. *There is growing awareness, nationally and in California, that community colleges are vitally linked to future economic and social health. What is the board doing to address the system's capacity to increase completion rates, particularly among growing and underserved populations?*

### **Career Technical Education**

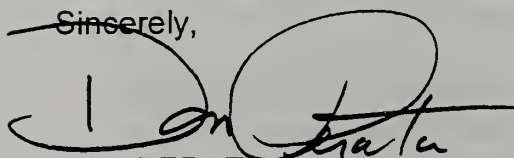
Legislation passed in 2005 established the career technical education improvement grant program to improve linkages and align career technical education pathways between high schools and community colleges. The Chancellor's Office and the California Department of Education administer the act, in which funds are allocated through a competitive grant process. The 2007 Budget Act appropriates \$32 million for career technical education improvement program.

14. *What priorities and criteria have the board established for dispersing funds appropriated for improving career technical education? Do you believe local community college districts should align curriculum with the secondary level career technical education programs? If so, how can the board help accomplish this?*
15. *What is the Chancellor's Office doing to address the need for better coordination between K-12 and community college vocational programs? Have the community colleges collaborated with the K-12 community in distributing these funds and establishing the requirements for receiving the funds?*

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Perata", is written over a horizontal line.

DON PERATA

DP:LG

January 15, 2008

The Honorable Don Perata  
President Pro Tempore  
Senate Rules Committee, Room 420  
Sacramento, CA 95814

Dear Senator Perata,

Thank you for the opportunity to appear before your committee on February 13, 2008 and to respond to your questions. I am honored to have the opportunity to serve on the California Community College Board of Governors. I will take this responsibility seriously and work hard to serve the community college students of California. Below are my responses to your questions.

**Goals and Responsibilities**

1. As a member of the Board of Governors, I have as my goals the maintaining of the highest quality of services for all of our students, representing the most vulnerable students, securing of scholarships for the underserved and underrepresented in academia, and supporting the best and the highest committed faculty and staff. I am also interested in how the community colleges can aid in supporting reduced recidivism in our prisons. Another goal of mine is to promote college awareness and access, as well as developing partnerships for economic and workforce development.
2. I have been given an orientation covering the Board's responsibilities by the Community College Chancellor's Office staff. I have much to learn. I consult with the General Counsel of the Board of Governors to clarify any conflict of interest concerns. I bring to the Board experience as a part-time instructor at Merritt and Laney Colleges within the Peralta Community College District. As Pastor, I serve a large inner-city church in Oakland that provides scholarships for poor students in our community.

**Preparing for the Future**

3. The biggest challenge in implementing the strategic plan is being able to develop programs that address critical needs without knowing what future resources will be available. We also need to come up with resource solutions that reflect the diverse needs of the state. Some colleges have greater challenges in serving students

Senate Rules Committee

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Appointments

because of the diverse needs of students across the states and therefore need more resources. I hope to work with colleges that are struggling most to fund critical programs. Basic skills is also a critical need for many districts, such as where live. These students have not had high quality educational opportunities to them develop the basic skills needed to succeed in college. I support the Board's commitment and direction in making how we teach basic skills one of the highest priorities for the system.

4. The Board monitors the implementation of the Strategic plan by getting an update at each board meeting. The board has the authority to intervene at any point when it feels the strategic plan is not being implemented in a fashion it agrees with. For example, the Board recognized the need to help high school students begin early preparation for college and supported SB 946 (Scott) to implement a pilot Community College Early Assessment Program. This intervention by the board became a new component of the system strategic plan.
5. Locally driven priorities should not drive the board entirely. The Board should establish a broad policy framework that provides direction and is still inclusive of local needs. The board sets the tempo and rhythm for community colleges, while the colleges have the flexibility to tailor policies and programs to meet local needs.

#### **Student Fees and Affordability**

6. The Board strives to support additional efforts to help more students complete the Application for Student Aid Form (FASFA). Unfortunately, many effective practices for increasing student participation in financial aid costs more money, which is quite limited in a year like this one. I believe, however, that we need to encourage colleges to be creative and innovative in working with the local community to help students prepare for college and apply for financial aid. For example, I support community efforts, such as Super Sunday, which gets the community and local churches involved in promoting education and helping students complete the federal financial aid form. Additionally, I support another outstanding program called the "UMOJA Community for Student Success." This model statewide program has been successful in improving the retention and success of African American and other students who face the greatest challenges to succeeding in college.
7. Yes, there should be a long-term student fee policy because this is what is needed for the lowest income students in California to realistically prepare for college. This policy should ensure that student fees are gradual, moderate, and predictable.
8. I believe this recommendation has merit because we need to find new resources to support increased financial aid.



### **Developing Basic Skills of Community College Students**

9. The Board's number one priority is to help students build the basic skills they need to succeed in college. Currently, the system is identifying best practices and is funding professional development for faculty to learn new strategies to teach basic skills. The goal of basic skills development is to help students prepare for and succeed in taking college level coursework. Basic skills students are tracked annually in the Accountability Report for Community Colleges (ARCC) in the following ways:
  - Number of basic skills students who complete a basic skills course at least one level higher than their previous basic skills completion.
  - Percentage of successful course completions (grade A, B, C, CR) for credit basic skills enrollment.
10. The Board is very interested in the progress being made to improve students basic skills and has made this its highest priority. The Governor signed AB 194 a bill the system strongly supported, which redirects \$33.1 million to Basic Skills and ESL improvement. To receive this funding, colleges must complete an action plan describing the effective practices they need to implement to make improvements in these areas. The Board has also given direction that a portion of these funds is to be used for the development of statewide professional development for faculty. Foothill College received a grant from the Chancellor's office to design and conduct the statewide professional development program for faculty to help develop improved instructional strategies, to better integrate instruction and support services and to help students transition into the community college environment.

### **Student Success**

11. The Board supports SB 946 (Scott), the Community College Early Assessment Program, which would make strides in encouraging colleges to work with K-12 schools to align educational standards, assessments, and coursework to help better prepare students to succeed at a community college. Colleges also need to work with K-12 is because so many parents have not had a formal education and do not know how to help their children prepare for college. Preparation for college must start at the earliest levels to adequately prepare the most underprepared students to succeed in college. Children already have the desire to succeed. I watch the children play and see how bright-eyed and eager they are until they get the message that they cannot succeed. I want them to know they can succeed.
12. The Board approved a motion last year to ask the Chancellor to begin the process of evaluating the implementation of a uniform systemwide, common assessment system for all community college students. In response to this motion, a Task Force was called to address this issue.



The Task Force provided a report to the Board in January and was asked to continue its work in developing recommendations. The Board also supports a school-to-college-bridge program to systematically bring college into targeted high-need high schools. The program helps students understand what they need to succeed academically. It also requires that all students complete the federal financial aid forms and apply to a college before they graduate.

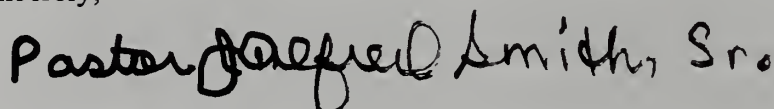
13. I agree that there is a growing need for a well trained workforce in the nation. Community colleges are critical to training a growing workforce and addressing the problem of low academic achievement in the state. Board representatives, like myself, who live and serve in communities of underserved students are committed to work for increased completion rates.

### Career Technical Education

14. The Board supports the priorities identified within the SB 70 process for dispersing funds to colleges that submit grants for strengthening their career technical education programs. The Legislation requires the community colleges to develop an expenditure plan in collaboration with the State Department of Education and approved by the Director of Finance. The funding must be used to improve career technical education programs so that students can move seamlessly from a high school career technical program into a community college program. In my role as a Board member, I will have oversight of, and will monitor how these funds are spent.
15. The Chancellor's Office is actively working with the SB 70 group to disperse CTE in close collaboration with the K-12 community and the business sector. It is my understanding that Community Colleges must work close collaboration with the K-12 community. Applications for funding must show this collaboration in order to be competitive. I also am a member of the Board's committee for improving career technical education. Additionally, the Board is working to encourage the business and trades sectors to collaborate in the work of recruiting, training and hiring students to work as interns in career technical education. Community colleges are best suited for implementing career technical education.

If you have any questions regarding this matter, I can be reached at (510) 544-8923.

Sincerely,

A handwritten signature in black ink that reads "Pastor J. Alfred Smith, Sr." The signature is written in a cursive, slightly slanted style.

Pastor J. Alfred Smith, Sr.  
Member, Board of Governors CCC

January 16, 2008

Timothy A. Simon, Member  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Dear Mr. Simon:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of California Public Utilities Commission (CPUC) on Wednesday, February 13, 2008. We request that you appear. The meeting will begin at 1:30 p.m. in Room 113 of the State Capitol.

We have prepared the following questions to which we would appreciate your written responses. Please provide your responses by February 4, 2008.

We would also like to receive an updated Form 700, Statement of Economic Interest, by February 4<sup>th</sup>.

### **General Issues/CPUC Process**

1. *What do you hope to accomplish during your tenure as a CPUC member? What are your specific areas of interest?*

Response - As I review the Public Utilities Code, I see three major themes: First, utility rates must be fair and just for all - for residential consumers, for commercial and industrial customers, and for the utilities who provide the services. Second, public policy requires that the Commission ensure that low income Californians have access to utility services; third, the actions of the Commission should support economic opportunity and growth.

I have used these principles to guide votes. For example, I voted to require PG&E shareholders to refund over \$35 million to customers for improperly billed gas and electric services. In doing so, the Commission did not penalize a company for investing in a new billing system, but rather for rendering erroneous bills and reimbursing affected customers from shareholder dollars. Utilities must provide accurate bills and follow the law in collecting what is due.

Second, for low income customers, I have voted to expand the Low Income Energy Efficiency programs by making them available to more customers, improving their cost effectiveness, and designing them in ways to make them a reliable energy resource. I

**Senate Rules Committee**

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**Appointments**

voted for this decision because low-income energy efficiency programs that teach consumers energy literacy, or how to save energy, ultimately save needed money for the low income customer.

Third, consistent with legislation, I voted in favor of economic development rates. For some with high energy costs, such as the manufacturers of glass, only the availability of an Economic Development Rate have enabled them to remain in California. Thus, I have voted to keep jobs in California.

There are, of course, many more votes that I have cast in my months as Commissioner. I think, however, that these examples illustrate both my policies and interest going forward.

Lastly, I plan on focusing on ensuring that California continues to have an adequate supply of natural gas. Accordingly, I am on the Natural Gas and Critical Infrastructure Committee for the National Association of Regulatory Utility Commissioners (NARUC). As a committee member, I represent California on issues related to natural gas at the national level.

In recent years the commission has enacted major new policies in areas such as solar energy resources, greenhouse gas emissions reductions, and telecommunication consumer protections. In some cases, CPUC's actions have significant state budgetary impacts or impinge upon the statutory mission of other agencies (i.e., direct access, climate change).

2. *What factors do you consider when voting on decisions that affect the state budget and/or other agencies?*

Response - In general, the policies that the CPUC enacts principally affect over 30 million utility ratepayers. The most common sources of funds are either charges that are included in the overall costs of service, charges that are separately itemized on the bill, funds contributed by shareholders, or some combination of ratepayer and shareholder funding.

In addition, these programs have their origins in statute. For example, the Commission has imposed regulations to meet the legislatively mandated California Solar Initiative (CSI). In some cases, this will lead to higher energy costs. Since meeting these standards is a government mandated obligation, the Commission will almost certainly permit the recovery of the costs in energy rates. Government, like other consumers, will face higher energy costs, but the Commission does not impose a direct cost on other branches of government. Such would also be true for the proposal to fund research into



climate change which has its origins in Assembly Bill (AB) 32, effective September 27, 2006, known as the California Global Warming Solutions Act of 2006.

For any proposed regulation that would impose such high costs, I make sure that it has a strong statutory justification and that the likely benefits of the proposal outweigh the costs imposed on consumers and shareholders.

The Public Utilities Code establishes the intervener compensation program at the commission. The program is intended to ensure that the commission hears from a broad cross-section of public interests, and that it provides for effective and efficient public participation in the utility regulation process.

3. *What is your view of the effectiveness of the intervener compensation program? Do you support any changes to the program, such as increasing or decreasing intervener compensation rates?*

Response - As a matter of law, I support the intervener compensation programs.

As a matter of principle, I support the broadest participation in Commission proceedings.

It is also important to note that California ratepayers fund the utilities in their legal and consultant cost of proceedings. Any modification to intervener compensation must be evaluated with fairness and with a level playing field in mind. Ratepayer advocates are resource constrained. I have reached out to groups that may have a different philosophy than mine to guarantee that their research and analysis is included in my analysis. Accordingly, their sometimes contrarian view should, and I can say does, receive the resource allocation treatment experienced by California's utilities.

I would support changes to the programs that will enable more representatives of California's underserved communities, including, but not limited to, minorities, women, disabled veterans, and small businesses, to participate in this program. I have met with groups who receive compensation from the current program and it appears that many of these groups fail to reflect the diversity of California.

Concerning the compensation rates for interveners, it is my understanding that they are revised periodically to reflect changes in compensation in California labor markets. In general, the rates are revised upwards every year or so and I have supported increases as recommended.

**Electricity**



As the state's 2000-01 energy crisis illustrated, California is vulnerable to electricity shortages and the ills that accompany them. Also, Californians still pay, on average, among the highest rates in the nation.

*4. Do you support actions to lower investor-owned utility rates? If so, what actions?*

Response - First I'd like to be clear about the distinction between utility rates and utility bills. While Californian's have higher rates on average compared to the rest of the nation, they do not necessarily have higher bills due to our implementation of aggressive energy efficiency measures in the seventies. I support actions to lower investor-owned utility bills and see energy efficiency as a key strategy to lower bills by using less energy. This is a win-win since consumers pay lower electricity bills and California reduces its carbon footprint, which helps the state meet its climate change and environmental goals.

*5. What should the commission be doing to ensure an adequate and affordable supply of electricity, both in the near- and long-term?*

Response - Through the Long-term Procurement Proceeding, the investor owned utilities submit 10-year procurement plans requesting authority to build new power plants to adequately meet their projected need. The Commission reviews the utility plans, and based on demand predictions from the California Energy Commission Integrated Energy Policy Report, the Commission authorizes the utility to procure a set amount of megawatts. As part of the decision-making process, the Commission balances the projected need with the costs to ratepayers. For the near-term, the Commission requires each utility to procure resources that meet resource adequacy requirements for a particular region.

*6. What steps do you support as a commissioner to improve energy efficiency, diversify electricity supplies, improve transmission infrastructure, and strengthen system reliability?*

Response - I support the recent decision the CPUC adopted this October to set overall energy efficiency goals that push the utilities to install energy efficiency measures that have a long-term effect. I also support the decision goals to work with the building industry to reach an energy efficiency target of "net-zero" energy homes by 2020 and commercial buildings by 2030.

Regarding diversity of electricity supplies, I support procuring a wide variety of renewable resource technologies including wind power, solar, both utility-scale and distributed, geothermal, and biomass. As I describe in greater detail in my answer to

question 7, the Commission is working with multiple agencies to tackle transmission. The Renewable Energy Transmission Initiative's purpose is to identify the needed transmission lines for renewable energy and streamline the identification and permitting process so that the transmission line comes on-line around the same time as the renewable project. As for system reliability, I support the Resource Adequacy program's efforts to identify the necessary resources located near the load pockets to keep the lights on. An essential part of the Resource Adequacy program is the reserve margin, which has provided a large enough buffer the past two summers to prevent electrical outages.

I also recognize that key renewable sources of energy such as wind and solar are intermittent and that we will still need to rely on natural gas to stabilize the grid and provide reliable electricity services. Hence, we must expand the efficiency of fossil sources, increase the viability of storage technologies, and deploy smart grid technologies to address an increased reliance on renewables, growing population, and aging infrastructure. Frankly, I view this as a great opportunity for economic stimulus.

In 2002 California enacted into law a renewable portfolio standard (RPS) requiring investor-owned and municipal utilities to meet at least 20 percent of their electricity needs through renewable energy by 2010. Reports from CPUC and others suggest that investor-owned utilities will not meet the 20-percent-by-2010 deadline. Your agency has also endorsed the goal of achieving a 33 percent RPS goal by the early 2020s.

One of the largest wind developers has suggested that the RPS program is excessively complex, and that this complexity could hinder the RPS program from meeting its objectives.

7. *What actions have you taken to ensure compliance with RPS? What steps need to be taken to ensure renewable energy resources are deployed consistent with the renewable portfolio standard?*

Response - One of the main barriers to bringing renewable resources online is lack of transmission infrastructure. Since I joined the Commission, I have been an active supporter of the Renewable Energy Transmission Initiative, whose purpose is to proactively identify the transmission paths so that the state can evaluate proposed transmission lines at the same time it sites and approves renewable generation projects. In order to ensure renewable energy resources are deployed consistent with the renewable portfolio standard, all stakeholders, including the California Energy Commission, the California Independent Systems Operator, the project developers, and the community need to collaborate and cooperate towards building the necessary transmission infrastructure in a timely fashion. We can no longer proceed with

business as usual when it concerns overcoming the various barriers to bringing more renewable energy online.

Furthermore, I agree that the complexities of the RPS may act as a barrier for developer entry into the market place. For this very reason I have:

- Asked my staff to convene a workshop educating women, minority, and disabled veterans regarding how they can take part in the Renewable Portfolio Standard project solicitation process.
- Organized a summit on Investments and Green Jobs titled "Advancing the New Energy Economy in California" to educate community members about opportunities for them in clean energy.

I share the concern of RPS compliance and have asked my office to meet on a regular basis to meet with the Energy Division regarding up-to-date information on contracted versus delivered power.

8. *Have you also endorsed the goal of achieving 33 percent RPS by the early 2020s? Please explain what steps you have taken to promote that goal. Have you, or the commission, evaluated the costs to investor-owned utility ratepayers of meeting a 33 percent RPS goal? If so, please describe.*

Response - The CPUC and the California Energy Commission (CEC), through the Energy Action plan, endorsed the 33 percent RPS goal by the early 2020s. Pursuant to SB 1036, the CPUC cannot mandate that the utilities comply with this goal. The CPUC would need legislative authority to enforce it. The CPUC is committed to this goal and as a result, has created the Renewable Energy Transmission Initiative to overcome the number one barrier to reaching 33 percent, which is transmission. The Commission has conducted a very preliminary analysis of the rate impact of increasing renewable from 20% to 33% through the climate proceeding's consultant, E3. The Commission is committed to more detailed analysis in 2008.

9. *How can CPUC act to ensure that new renewable energy projects will soon be built in the state, and that the program will not become excessively complex?*

Response - Since the Renewable Portfolio Standard program's inception, the CPUC has worked diligently to implement the statutory requirements of SB 1068, SB 107, and SB 1036. The CPUC is charged with creating a fair, transparent, and competitive process to select renewable contracts that are least-cost and best-fit for each utility territory. The Commission has created clear and robust reporting, compliance, and enforcement rules, which are in place today. While the RPS may be viewed as complex, competitive procurement in general is complex. Over the past two years, the CPUC has responded



to stakeholder critique and has made the program more streamlined and has increased transparency of the procurement process.

In the last quarter of 2007, the CPUC approved 6 Investor Owned Utility ("IOU") contracts for renewable power, equating to 897 MW of renewable capacity, 672 MW of which will be new development. Another 16 contracts are currently under review at the Commission. These contracts total 2,282 MW, and all but one contract – the renewal of a 50 MW wind contract – represent new capacity.

The following Table provides a summary of the contracts approved since the first interim RPS solicitation was held in 2002, anticipating the program's implementation in 2003.

Year*	PG&E	SCE	SDG&E
2002	4 contracts (119 MW)	5 contracts (268 MW)	15 contracts (239 MW)
2003	3 contracts (44 MW)	8 contracts (687 MW)	1 contract (40 MW)
2004	6 contracts (311 MW)	0 contracts	6 contracts (580 MW)
2005	8 contracts (734 MW)	12 contracts (449 MW)	6 contracts (193 MW)
2006	10 contracts (337 MW)	0 contracts	0 contracts
2007	2 contracts (5 MW) <sup>1</sup>	1 contract (15 MW)	0 contracts
<b>Total</b>	<b>33 contracts (1550 MW)</b>	<b>26 contracts (1419 MW)</b>	<b>28 contracts (1052 MW)</b>

\* Solicitation year or year that bilateral negotiations concluded

While the RPS procurement process has resulted in dozens of contracts for new renewable capacity, project development continues to lag. Only 114 new RPS-eligible MW became operational in 2007, 85 MW of which were developed in Oregon. The CPUC anticipates that approximately 140 new MW – primarily in-state projects – will begin delivering RPS-eligible energy to CA IOUs in 2008.

The slow pace of project development despite strong solicitations underscores the fact that projects face a number of challenges beyond simply getting a contract with an IOU to coming online. These barriers include, but are not limited to, transmission, permitting challenges, and developer inexperience. The CPUC is working with the

<sup>1</sup> These contracts, for pipeline quality biogas, have no associated MW capacity. However, each contract's minimum estimated generation, 15 GWh/yr, is the approximate energy produced by a 2.3 MW plant with a 75% capacity factor.



range of stakeholders, market participants, and public entities that play a role in bringing renewable resources online to ensure that RPS projects remain on track.

I am reviewing the RPS procurement process. I have concerns regarding the level of participation. I am not opposed to changes in RPS to bring greater vitality and output.

*10. What actions are you taking to implement RPS requirements for energy service providers?*

Response - In 2006, the Commission completed the integration of Energy Service Provider (ESPs) into the RPS compliance framework. To the largest extent possible, the rules and obligations related to ESPs are the same as those for investor-owned utilities. ESPs must meet the annual and final procurement goals set out in the RPS statute, and must report their progress in regular reports required by the Commission. (See D.06-10-050, setting out reporting requirements, and D.06-10-019, affirming that ESPs must comply with the reporting requirements.) SB 107 provided that the first year of ESPs' RPS obligation would be 2006. Under the RPS program's flexible compliance rules, the Commission will determine ESP's compliance in 2009.

Earlier this year the commission initiated a proceeding to determine the potential reinstatement of direct access, the retail service option whereby eligible customers purchase electricity from an independent supplier rather than from an investor-owned utility.

*11. What is your position on direct access? In addition to those conditions prescribed by law, under what conditions should the current suspension on direct access be lifted?*

Response - As a general matter, I am in favor of regulatory innovations that help to lower customers' costs and that help to empower customers. It is possible that lifting the suspension on Direct Access (DA) could further both objectives. If that is the case, then the Commission should consider DA as a positive tool to benefit customers. I would support lifting the current suspension of direct access if consumers experience lower rates when exercising choices.

My support for the timing of the reinstitution of direct access is driven by Water Code § 80110, which states: "the right of retail end use customers ... to acquire service from other providers shall be suspended until the department [the Department of Water Resources] no longer supplies power hereunder." From my reading of this statute, absent new legislation, the Commission cannot reinstitute Direct Action at this time because DWR continues to supply electric power.

Under current law, once this condition has been met – the DWR is out of the power business – the prohibition on direct access would automatically lift. At that time, my support for a direct access will depend on the details of a particular proposal.

In my view, an automatic transition to direct access is not wise. The Commission should identify market rules in advance of the triggering event (i.e. the exit of DWR from power markets) to ensure that the transition to direct access is smooth and non-disruptive to California businesses and consumers.

In practice, the market for direct access should be structured in a way that benefits all. My support for any specific retail proposal would therefore depend on how a specific proposal meet the factors identified in my answer to question 12.

*12. What factors are you considering when assessing any program to reinstitute retail competition and its impact on consumers?*

Response - When considering the details of any program to reinstate retail competition, of prime concern to me will be the following factors:

1. What affect will a specific proposal for retail competition have on the prices paid by consumers who remain with the traditional electric utilities? On those that elect to depart? On low income and lifeline customers?
2. What affects will a specific proposal for retail competition have on the overall California economy? What affects will it have on employment and California jobs?
3. How will the proposal ensure the adequate supply of electric power, both now and in the future?
4. What affect will a specific proposal have on the environment? Will a proposal enable customer to purchase "green" or "renewable" power to do so?
5. What affect will a specific proposal have on California's ability to meet its Renewable Portfolio Standards, which envision California meeting 33% of its electric energy needs with renewable energy in 2020?
6. Will the specific proposal for retail competition lead to real competition, or will it be little more than the shifting of "reliability costs" or "energy crisis costs" from one set of customers to another?

These are the initial factors that I would consider to guide my choice of any specific proposal for retail competition. I anticipate that as the Commission moves closer to selecting any specific proposal, the regulatory reviews will also identify other aspects of retail competition, which I will openly consider.

## Telecommunications

An audit released by the state controller on August 21, 2007, revealed that CPUC's accounting and collection procedures resulted in the loss of more than \$32 million in fines and restitution that have gone uncollected since 1999. Current law requires that these fines and penalties be deposited into the General Fund.

The controller's audit also found that CPUC does not adequately review the background and financial viability of those who apply for licenses to operate as telecommunications providers. The audit also found that the majority of CPUC fines deemed uncollectible were levied against telecommunications companies that either ceased to operate or filed for bankruptcy after CPUC launched investigations or imposed fines for fraudulent or questionable activities. In many cases these companies began billing consumers for millions of dollars in unauthorized charges shortly after being registered by CPUC.

*13. What specific steps have you taken to improve CPUC's collection efforts? What percentage of the uncollected fines and restitution have you collected since the audit findings were disclosed?*

Response - I voted recently to seek legislative authority to expand the Commission's powers to collect fines and restitution in this area. In particular, I support legislative authority to hold the owners of rogue corporations personally liable for the actions of the corporations that they own. For example, I have joined with my fellow Commissioners to request that the legislature grant the Commission authority to:

1. Use DMV registration process to force payment of delinquent fines owed by passenger and household goods carriers.
2. Improve the CPUC's Enforcement and Collection Process.
3. Allow the Commission to go after the personal assets of the company's owner where fraud has occurred.
4. Give the Commission creditor status under the Uniform Fraudulent Transfer Act.
5. Allow the Commission to prosecute under the Penal Code.
6. Require owner/operators of public utilities and common carriers to demonstrate their ability to pay potential penalties or restitutions upon the Commission opening an investigation.



7. Give the Commission judgment creditor status in the CA Code of Civil Procedure.

Furthermore, the Commission is doing the following, which I support:

1. The Commission agreed with the State Controller's Office recommendations (Report of Review, Fines and Restitution Accounting and Collection, August 2007) to formally adopt the draft operating procedures for fines and collections. Our Consumer Protection & Safety Division (CPSD) has implemented the operating procedures, which assign collection responsibilities to the various Commission divisions and include accounting controls to ensure that all fines imposed and collected are accurately reflected in the formal accounting records.
2. The Commission is also considering the establishment of a centralized collection unit within the Fiscal Office. The Governor's proposed budget for FY 2008-09 includes 3 new positions for this effort.

In response to the second question, of the amount identified as "uncollected", there have not been any collections since the audit findings were disclosed. The Commission is in the process of requesting proposals from collection firms. The Commission expects a firm to be selected by the end of March 2008. Collection efforts are expected to take approximately 2 to 3 years beginning in April 2008. At this time, it is difficult to determine the success of these efforts, but it is highly unlikely that more than 25% of the uncollected fines and restitutions will be collected. After exhausting all reasonable options, and when the Commission has made a determination that certain amounts are uncollectable, the fiscal office will request the State Controller Office's (SCO's) approval for the write off of certain amounts in accordance with the State Administrative Manual.

14. *What steps have you taken to improve the review and approval processes in licensing telecommunications providers to ensure that these providers are financially viable?*

Response - I have asked Commission staff to investigate whether bonding requirement might prove more appropriate for ensuring financial responsibility of carriers than the current balance sheet reviews and to determine whether such a bonding requirement is consistent with the Commission's statutory authority. In addition, as noted above, I have voted to support new legislation that will ensure the Commission's ability to collect fines and penalties.



Last year the California Legislature passed AB 2393 (Levine), Chapter 776, Statutes of 2006, which requires CPUC to examine emergency notification systems and to determine, in consultation with the Office of Emergency Services and the Department of General Services, whether standardized notification systems and protocols should be used in California. The legislation requires that CPUC analyze various technologies and make recommendations to the Legislature for the funding of notification systems and any necessary statutory changes.

As the assigned commissioner to this proceeding, you have the primary responsibility for presenting this report to the Legislature before March 30, 2008. You stated in an OP-ED piece in the *Sacramento Bee* (August 12, 2007) that "California must devote additional resources to emergency response protocol communications infrastructure . . . and the Legislature will need to act to fund a new system to ensure that our state's growth is coupled with emergency response capacity derived from new technologies and emerging national improvements."

15. *With the state facing a severe structural budget deficit, what options could the commission present to the Legislature for funding additional resources for an emergency response protocol communications infrastructure?*

Response - In my view, there are several different approaches that could be adopted, even in the face of a structural deficit. Currently, the state 911 surcharge is set at its minimum level authorized by statute. Therefore, it is possible that the Commission could present to the legislature an alternative that increases in the size of the surcharge to fund the next "pilot" projects needed for an emergency response communications infrastructure.

In addition, under my leadership the Commission is currently working with the FCC to obtain a "first office application" status for mobile notification systems. Such a designation will enable California to receive federal assistance and support for trials of new technologies for emergency communications.

As information is developed in the investigation and in our work with the FCC over the next several months, the Commission should be able to present a detailed recommendation to the legislature that could permit progress in this area despite the severe structural budget deficit.

In March 2006, the Commission adopted a decision on the subject of telecommunications consumer protections. Supporters of the decision contended that the measure provides adequate consumer protection. Critics asserted that it reverses years of CPUC policy regarding what information and guarantees customers receive about costs and terms when they purchase telecommunications equipment and services. The decision also did not provide for contracts in a foreign language, if that

language was used to sell telecommunications equipment or services—a provision strongly supported by consumer groups.

*16. Please explain what factors you considered in supporting this decision.*

Response - I did not join the Commission until February 2007 and so I did not vote on the March 2006 decision. Thus, when I joined the Commission, the approach set out in the March 2006 decision was a fait accompli.

In general, I believe that consumer protection is one of the core missions of the Public Utilities Commission. It will be my overriding concern as I look at any issue that touches on consumers.

In particular, in my vote in support of July 2007 In-Language decision, I made clear my views in my concurring statement. I said, "fraud is fraud and a violation of California and the common law, whether the fraud takes place in English or some other language." I supported the in-language rules because I felt they would help non English speaking consumers understand the contracts they were entering into and deter fraud perpetrated against non English speaking communities. As of last month, I can report that the carriers are complying with our in-language rules, and many are providing in-language contracts at the point of sale because of our new PUC rules.<sup>2</sup>

Consistent with my consumer protection concerns, in March of 2007, I voted for a decision whereby Cingular Wireless was fined \$12.14 million and was ordered to refund \$18.15 million to customers for collecting early termination fees at a time when the Cingular network was unable to provide good coverage in some areas. In my view, when a telephone company sells a cell phone and service, the customer has a right to expect that the cell phone will work most places that the consumer needs it to work.

*17. How do you address the assertion that this decision shifts the burden to consumers to request specific information? How are you monitoring the success or failure of this new policy? How will you measure its success or failure?*

Response - Based on my understanding of the decision, it is not true that the decision shifts the burden to consumers to request specific information. What the decision found was that there were plenty of laws on the books to protect consumers but the PUC needed to better enforce those laws to more aggressively protect consumers, given many changes in the communications marketplace.

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<sup>2</sup> T-Mobile, ATT, Sprint – most are doing Spanish. T Mobile is doing two Asian languages.

To that end, the PUC has added a Telecom Fraud Unit to enforce those laws more proactively. Further, the PUC has greatly increased the Consumer Affairs Bureau staff who take public complaints, including hiring those who speak other languages than English. We are putting in a new complaint database to better track complaints and our resolution of them. We intend to aggressively go after illegal practices, such as slamming and cramming. As a Commissioner, I will work to ensure not only that carriers align their billing systems with the requirements of the law but that they work to avoid practices which, even if legal, overwhelm and abuse consumers. I support all these efforts, particularly the enforcement issues.

I intend to monitor all of these efforts closely and ensure that consumers are not taken advantage of.

*18. Please describe how CPUC will ensure that customers whose primary language is not English are treated fairly, and how CPUC will determine if its telephone consumer protection rules are adequate.*

Response - As I mentioned above in response to question 16, I voted for the imposition of requirements on carriers who market in languages other than English. In my concurrence, I stated: "Most importantly to me, if a carrier markets in a language other than English, the carrier incurs the obligation to enable a consumer to reach a live person who speaks the language and can assist the customer." Within the Commission's deliberative process, I worked hard to ensure the incorporation of this provision in the decision.

As I also mentioned above, the Commission is developing a data base which will be able to track the experiences of customers and carriers in multiple languages. This will enable the Commission to determine directly whether rules are being followed and customers protected.

### **Energy Efficiency and Climate Change**

The commission recently approved the decoupling of utility energy efficiency investments from utility revenues to provide utilities greater financial incentive to invest in efficiency.

While some environmental groups supported the commission action, it was opposed by consumer and ratepayer groups who believe that cost-effective energy efficiency should be mandated on utilities and not paid for by ratepayers for utility profits.



19. *You supported the decision to "decouple" energy efficiency from utility earnings. Please explain the reasons for your decision.*

Response - I'd like to clarify that the CPUC voted before I joined the Commission to create a risk/reward incentive mechanism for energy efficiency. On September 20<sup>th</sup>, I voted to approve the program structure of the incentive mechanism. I supported the program structure because it provides a very strong incentive for the utilities to reach their energy efficiency goals and will save ratepayers millions of dollars. The incentive mechanism also applies an equally strong penalty if the utilities fail to meet a minimum threshold. This balance of risk and reward, plus other measures, provide ratepayers protections.

AB 32 designates the state Air Resources Board (ARB) as the agency in state government charged with monitoring and regulating sources of greenhouse gas emissions. The Public Utilities Code generally vests CPUC with authority to regulate the investor-owned utilities.

20. *Please describe what role CPUC has in implementing AB 32 and broader greenhouse gas emission reductions affecting investor-owned utilities. Should the commission's actions complement and follow ARB actions under AB 32, or vice versa?*

Response - Since the legislature approved AB 32, the CPUC has worked very closely with the Air Resources Board (ARB) and the California Energy Commission (CEC) to utilize each agent's expertise to create rules that implement the law. The CPUC has much expertise in electricity markets and is currently formulating recommendations for the Air Resources Board. The CPUC is working jointly with CEC through an open and public process to formulate the recommendations. Once the ARB adopts the rules for the electricity sector, the CPUC will implement those rules.

21. *Since AB 32 focuses on new actions not otherwise required by law or regulation, how do activities like renewable energy and energy efficiency required to be implemented by CPUC fit into AB 32's architecture?*

Response - Current programs pertaining to renewable energy and energy efficiency contribute greatly to the state achieving the goals established in AB 32. While AB 32 is focused on designing new actions, it is relying on the success of current programs such as renewable energy and energy efficiency to help the state reach the emission reduction targets. In addition, the Air Resources Board may decide to expand these current programs to seek further reductions. Energy efficiency is the most cost-effective method for achieving emissions reductions and there is still much more the state can do in this area.



22. *Where the commission and ARB disagree on an issue relating to AB 32 implementation (e.g. point of regulation of greenhouse gasses—"load-based" versus "first seller" role of renewable energy and energy efficiency in meeting AB 32 goals), which agency's action should govern?*

Response - AB 32 makes very clear that ARB has authority over all issues related to an economy-wide greenhouse gas program. As a result, when the Commission and ARB disagree on an issue related to AB 32 implementation, the CPUC's role is only to make a recommendation. ARB ultimately will decide how to proceed on that particular issue.

Last January CPUC adopted an interim Greenhouse Gas Emissions Performance Standard in an effort to help mitigate climate change. CPUC's actions implemented SB 1368 (Perata), Chapter 598, Statutes of 2006, which requires CPUC to prohibit electricity providers and corporations from entering long-term contracts that do not meet the state Energy Resources Conservation and Development Commission's standard. This action is viewed as an important interim step in achieving greenhouse gas emissions reductions.

23. *What steps do you support for the commission's long-term plan to establish and enforce emissions limits? What steps can the commission take to ensure reductions in Gig's, and not simply shifts in who purchases coal power, occur as a result of the GHG emissions performance standard?*

Response - The CPUC takes very seriously the threat of contract shuffling, or a shift in the purchase of coal power. For that reason, the CPUC will enforce SB1368 and monitor all contracts to avoid this situation. If the CPUC finds that the utilities are able to game the program, the CPUC will reevaluate the rules to make them more robust. Currently, the Commission is developing the enforcement rules for SB 1368 to ensure full compliance.

In addition to creating robust rules for SB 1368. The CPUC voted on September 6th to establish reporting and verification protocols to collect the information that would be needed to track and verify GHG emissions attributed to the electricity sector under AB 32.

I recognize that this is a very complex issue and one mainly associated with imported power. California imports 20% of its power, half of which comes from coal. While only 10% of California's electricity comes from coal, this accounts for over 50% of the electric sector's carbon emissions. As a result, I support a point-of-regulation that accounts for

imported power. In my view, choosing a point-of-regulation that did not account for imported power would not comply with legislative mandate set forth in AB 32.

The commission is currently considering a proposal to establish a new, \$600 million Climate Institute at the University of California (UC). As proposed, the Institute would be funded by investor-owned utility (IOU) ratepayers, and overseen by the UC and the CPUC. While many parties support climate change research, consumer groups and others have stated that the costs of the Institute should not be borne solely by IOU ratepayers.

24. Do you support paying for climate research exclusively from IOU ratepayer funds? What steps do you support to ensure costs of climate research are distributed among all parties causing or contributing to climate change?

Response - Assembly Bill (AB) 32, effective September 27, 2006, known as the California Global Warming Solutions Act of 2006, found that global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. (Section 38501(a)) To address the global warming crisis, AB 32 requires the adoption of regulations to limit the levels of statewide greenhouse gas (GHG) emissions in 2020 to the statewide GHG levels that existed in 1990. In addition, the Act found that investing in the development of innovative and pioneering technologies will assist California in achieving the 2020 statewide limit on emissions of GHG and will provide an opportunity for the state to take a global economic and technological leadership role in reducing emissions of GHG. (Section 38501 (e))

AB 32 further finds that it is the intent of the Legislature that the State Air Resources Board (ARB) coordinate with state agencies, as well as consult with the environmental justice community, industry sectors, business groups, academic institutions, environmental organizations, and other stakeholders in implementing GHG emission level reductions. (Section 38501 (f))

And continuing, Section 38501 (g) of the Act finds that it is the intent of the Legislature that the State ARB consult with the Public Utilities Commission (PUC) in the development of emission reduction measures, including limits on emissions of Gigs applied to electricity and natural gas providers regulated by the PUC to ensure that electricity and natural gas providers are not required to meet duplicative or inconsistent regulatory requirements.

And finally, Section 38505(m) identifies that Statewide GHG emissions means the total annual emissions of Gigs in the state, including all emissions of GHG from the *generation of electricity delivered to and consumed in California . . . .*

President Peevey took a bold, innovative step on behalf of the PUC in asking the University of California to draft a proposal for a California Institute for Climate Studies (CICS) and submit it to the PUC for review under a Rulemaking (R.07-09-008). The PUC recognizes that the three, large investor-owned electric utilities regulated by the PUC, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E), as well as the regulated gas companies of PG&E, SDG&E and Southern California Gas Company (Scalars) have an enormous responsibility under AB 32 to reduce their GHG emission levels or face compliance penalties. One of the driving forces behind the concept of the CICS is to find innovative and commercially feasible technologies to facilitate the electric and gas companies' compliance with AB 32, and then train a new workforce to install, implement and deliver products that will reach the 1990 GHG emission goal.

The goal is to start CICS with ratepayer funds from the gas and electric utilities. However, that is not the desired end state. Ratepayer funds should be viewed as "seed money" to start an Institute that ideally will morph into a public-private partnership coordinating and utilizing the talent and expertise from all stakeholder groups, including the business, scientific and academic communities. The CICS will be charged with stewardship of ratepayer monies, and built in governance structure along with the yearly audits and reports will ensure that the research and outreach projects awarded CICS monies under a competitive solicitation process will be working toward technologies and projects that will benefit the utility ratepayers.

The Commission recognizes that many other economic sectors contribute to the current levels of GHG emissions and to the extent that the Legislature finds the CICS a worthwhile endeavor for the implementation of AB 32, the Commission invites the Legislature to expand the vision of CICS with additional funding from other sources, including other economic sectors that will also benefit from technology to reduce GHG emissions.

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointment Director, Room 420, State Capitol, and Sacramento, CA 95814.

Thank you for your assistance.

Sincerely,

Timothy A. Simon  
January 16, 2008  
Page 19

DON PERATA

DP:KW

cc: California Public Utilities Commission





DEPARTMENT OF INDUSTRIAL RELATIONS  
Workers' Compensation Appeals Board  
Reconsideration Unit  
Post Office Box 429459  
San Francisco, CA 94142-9459  
Tel: (415) 703-4580



January 24, 2008

Senator Don Perata  
Senate Rules Committee  
State Capitol Room 420  
Sacramento CA 95814-4900

**Senate Rules Committee**

RE: Confirmation Hearing of February 13, 2008

JAN 28 2008

Dear Senator Perata:

**Appointments**

I look forward to meeting with you and the members of the Senate Rules Committee to discuss my confirmation as a Commissioner of the Workers' Compensation Appeals Board. You had asked in your letter of January 8, 2008 that I include an updated Form 700 along with answers to specific questions. You will find a copy of the Form 700 and the following are my responses to the questions:

**1. Please provide a brief statement of your goals for your term on the board. What do you expect to accomplish? How will you measure your success?**

Description of goals and expected accomplishments:

I have been fortunate to have been working as a commissioner since March 9, 2007. This has assisted me in identifying the goals and the method whereby those goals can be accomplished. The immediate goal that comes to mind is interpretation of the major amendments to the Labor Code pursuant to SB 899. It isn't a simple goal and we have all worked very hard in our efforts to provide the workers' compensation community and the people of the State of California with fair and unbiased interpretation of the amendments. Measuring success in this area is not easy but if the participants in the system, the attorneys, doctors, insurance carriers and most importantly the injured workers are given the appropriate guidance from the WCAB then I would consider my term to have been successful.

**2. As a commissioner, how does your role in deciding cases and reviewing petitions for reconsideration enable you to identify key issues impacting the workers' compensation system? What, if any, leadership can a commissioner provide when issues are identified?**

Having practiced workers' compensation law for 34 years identification of key issues impacting the workers' compensation system is not that difficult. The difficult aspect is making sure that all cases are thoroughly reviewed so that all key issues are identified and resolved.

As noted previously I have been on the job for 11 months. In my role as a commissioner I have taken it upon myself to be a visible member of the workers' compensation community by participating in a number of conferences and seminars. I have made presentations to both applicant's attorneys, bar associations, claims associations, and medical associations. In these various forums issues that are of concern to members of the workers' compensation community are discussed and in turn those issues are brought to the attention of the commissioners.

**3. Since enactment of the recent workers' compensation law reforms, what are the most significant issues upon which the board has issued decisions that affect injured workers?**

There are numerous issues that have been of significance in the past 11 months since I have become a member of the Board. The issues that are most prominent are apportionment of disability to prior industrial and non-industrial conditions, implementation of the medical provider network, the panel qualified medical examination evaluation process, which permanent disability schedule should be used for injuries before January 1, 2005, rating of permanent disability under the permanent disability rating schedule adopted on January 1, 2005 and the 104 week cap on temporary total disability benefits pursuant to Labor Code section 4656. There are numerous other issues that come to our attention on a daily basis but those identified above are of particular importance to the workers' compensation community.

**4. To what extent, if any, have the recent workers' compensation reforms reduced litigation in the workers' compensation system?**

I would defer to Ms. Carrie Nevans, the Administrative Director of the Division of Workers' Compensation with regard to statistics on the number of filings at the local district offices. I was in attendance at a presentation made by Ms. Nevans where she did state that the number of initial case filings are down at the local district office level.

Although, my understanding from the presentation made by Ms. Nevans is that the filings have been reduced at the local district offices of the Workers' Compensation Appeals Board the actual appeals that reach our office have increased on average of approximately 100 per month since the enactment of SB 899.

**5. What impact have the workers' compensation reform measures had on the number of cases moving to the courts?**

As I mentioned above I do not have any specific statistics regarding the number of filings at the various district offices. Although I do not have statistics as noted I have been visible in the community and have had discussions with various participants, they have advised me that litigation has become more complex because of the need to clarify the law following enactment of SB 899. My former colleagues as well as applicant's attorneys that I have discussed this matter with advise me that litigation is more complex because of attempts to sort out exactly how SB 899 is to be interpreted.

**6. Do you believe the permanent disability regulations and schedule should be readjusted and if so, how?**

On this question I would defer to Ms. Nevans with regard to statistical surveys that her office has conducted as to whether or not there has been a reduction in permanent disability benefits. My understanding from attending the presentation that Ms. Nevans made is that there has been a reduction and the Administrative Director's office is reviewing the schedule to determine if there should be some changes which would allow for an increase in benefits. As someone who has practiced for 34 years and has been a commissioner for 11 months I can provide you with my personal opinion and that is that I have very little doubt that there has been a reduction in the level of permanent disability when the new schedule is



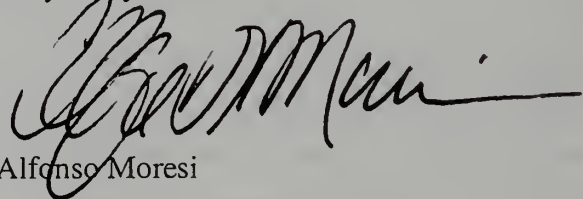
used. This is merely anecdotal evidence on my part but as noted it is based upon years of experience seeing hundreds of cases over the past 34 years. As commissioners we do not set policy or enact Legislation thus with regard to whether or not the schedule should be adjusted I would defer to the Administrative Director and the Legislature.

**7. What do you see as the major benefits the EAMS system? How is the EAMS system expected to affect WCAB and DWC? How will it improve efficiency and expedite the adjudication of claims?**

If the electronic adjudication management system does what it claims its going to do then we can expect more efficient use of all personnel in the Division of Workers' Compensation and the Workers' Compensation Appeals Board. At my former firm we instituted an electronic management system which increased our efficiency and made life a lot easier in the day to day practice of law. I expect the same result with implementation of EAMS and I also anticipate there when ever a new system is implemented that there are going be bugs that need to be worked out. I'm excited about the prospect of entering into the electronic age at the Workers' Compensation Appeals Board because I believe overall that it is going to be beneficial to the system. The morass of material that we have to work with at times is overwhelming and anything that will reduce the need review countless documents and for our time to become more efficient is welcomed.

I thank you for this opportunity to provide you with answers to these questions. I look forward to meeting with you on February 13, 2008 at 1:30pm.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Alfonso Moresi", written over a horizontal line.

Alfonso Moresi

AJM/aml

# CALIFORNIA LEGISLATURE

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NETTIE SABELHAUS  
APPOINTMENTS DIRECTOR

## SENATE RULES COMMITTEE

DON PERATA  
CHAIRMAN

December 19, 2007

Jesse H. Choper

Dear Mr. Choper:

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the California Horse Racing Board on Wednesday, February 13, 2008. You are not required to appear, but we request that you respond in writing to the following questions. Please provide your responses by January 11, 2008.

We would also like to receive an updated Form 700, Statement of Economic Interest, by January 11<sup>th</sup>.

### Goals

1. *Please provide a brief statement of your goals. What do you hope to accomplish during your term on the Horse Racing Board? How will you measure your success?*

### Horse Racing Industry

Gambling is a growing industry in California with about \$13 billion in gross wagering. However, the horse racing industry is not matching the rest of the gaming industry with gross wagering growing slightly from \$3.58 billion in 1997 to \$4.26 billion in 2006. Advanced deposit wagering and satellite wagering have helped keep revenue steady.

Furthermore, attendance at racetracks has dropped precipitously, from 10.9 million in 1997 to 2.9 million in 2006. There are seven racetracks in California and nine county fairs that conduct horse racing. Bay Meadows, one of the seven horse racing tracks, will close at the end of August 2008. Last year the board created the Strategic Planning Committee to analyze the horse racing industry, which has been said to be at a tipping

point. Larger purses at out-of-state racetracks have lured owners and their horses to other venues that used to run in California.

2. *How do you assess the future of horse racing in California? Is its financial future dependent on its ability to compete with gaming competitors?*
3. *What steps, if any, would you recommend taking to increase attendance at racetracks? What role should marketing play in the effort to increase attendance and revenues?*
4. *What role does horse racing at county fairs play in the future of horse racing in California?*
5. *What is the board's role in addressing future track closures? Should the number of racing days be reduced, or should they be divided up among the remaining tracks?*

### **Conflict of Interest**

There have been legislative proposals that sought to limit members of the board who have financial interests in the horse racing industry. In 2005 the board said it would write its own conflict-of-interest rules. Several states, such as New York, New Jersey, Illinois, Texas, Florida, and Louisiana, prohibit their horse racing officials from having any financial interest in the business.

6. *Has the board developed its own conflict-of-interest code? What is the status of this matter?*

### **Gambling**

In an August 2006 report, the Office of Problem and Pathological Gambling, administered by the Department of Alcohol and Drug Programs, said that there were approximately 300,000 pathological gamblers and another 400,000 problem gamblers in California. The study found that problem gamblers are more likely than other past-year gamblers to prefer sports and track betting.

7. *How is the board addressing problem gambling?*
8. *Besides the referral to the Office of Problem Gambling that is on the board's Web page, does the board provide any other information or referral information for problem gamblers?*



## Synthetic Tracks

The board has decided to require horse racing tracks with meets of longer than four weeks to install a synthetic material on their horse racing tracks for safety reasons. Evidence suggests that damage to horses can decline up to 85 percent with the use of synthetic tracks. While synthetic tracks also benefit jockeys who fall with the horses, concern has been raised by the Jockeys Guild over the long-term health effects of jockeys breathing this material, which is composed of plastics and rubbers.

Earlier this month the president of the Santa Anita Racetrack called its newly installed synthetic track a nightmare because of severe drainage problems.

9. *What has been the experience, to date, in California with synthetic tracks? What levels of reduction in horse fatalities and jockey injuries has been experienced?*
10. *Has the board undertaken a study of the possible long-term health effects of jockeys inhaling the material from synthetic tracks?*
11. *Are the problems with the synthetic track at Santa Anita a problem with the synthetic material or with its installation?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,



DON PERATA

DP:KW

cc: California Horse Racing Board



**JESSE H. CHOPER**  
Earl Warren Professor of Public Law  
University of California Law School  
Berkeley, CA 94720-7200  
Phone: 510-642-0339  
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EMAIL: CHOPERJ@LAW.BERKELEY.EDU

January 9, 2008

Response of Jesse H. Choper to Questions Regarding  
California Horse Racing Board

1. Stated generally, I have two goals:
  - A. To address the wide range of issues that come before the CHRB from the perspective of a racing fan (more specifically, a bettor) for nearly forty years.
  - B. To deepen my understanding of the large number of very difficult problems facing the horse racing industry and to apply an experienced and unbiased judgment in helping to solve them.
2. I "assess the future of horse racing in California" as extremely challenging, and definitely believe that its financial future depends "on its ability to compete with gaming competitors."
3. I think it is important that steps be taken, through "marketing" (defined as broadly as possible) to attract younger people, including families, to live racing at the tracks. Some of these people will undoubtedly become serious handicappers and bettors. But their attendance is important even if they never wager very much. Many major bettors will come to the track only occasionally and continue to bet through one of a number of off-track vehicles. But those who attend to spend an afternoon or evening at the races because they find it to be an enjoyable sporting event will provide an audience that will permit live racing to flourish rather than ending up with a couple of tracks in major cities that provide the only actual races to bet.

Senate Rules Committee

McWCastillo: 2008 CHRB Goals.choper

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Appointments

4. I think that the people who attend horse racing at county fairs fall directly into the category of potential new fans described above that is greatly needed for horse racing's successful future.
5. There appears to be a strong chance that both Bay Meadows and Hollywood Park may close within the next several years. If either does so, all efforts should be made to avoid reducing the number of racing days. It is important that the CHRB do all it can to facilitate the plans of existing tracks (Fairplex, Pleasanton, and Sacramento have expressed interest) to improve their facilities in order to become major venues for thoroughbred racing. If one or more of those tracks succeed, the question of how many racing days should be assigned to existing tracks, and how many to the newly expanded ones, requires careful consideration.
6. A revised conflict of interest policy has recently been adopted. I also understand that a draft of a Commissioners' Manual should be ready for review early this year. Finally, I believe that a rule prohibiting all racing officials from having "any financial interest" in the industry (whatever that term means) would be most unwise as it would exclude those persons with the greatest knowledge and experience concerning the problems facing the industry.
7. Although the issue of problem gambling has not been discussed during my eight months on the CHRB, I think that the August 2006 Report's conclusion that the problem has increased in respect to horse racing should be reviewed and action for dealing with this should be explored.
8. I have noted that at least some Racing Programs (e.g. opening day at Del Mar) have an announcement headed "Responsible Gambling" and provide a phone number to readers who have, or know of someone with, a gambling problem. I believe that the CHRB should consider requiring an announcement of this kind to be prominently displayed in all programs and at the tracks, etc.

9. Although problems have arisen at Del Mar (differences in track consistency between morning and afternoon) and Santa Anita (drainage), the overall reaction to the four synthetic tracks that have been installed in California has been very positive. The experience to date at all of them has been a major reduction of horse fatalities (and, I would imagine, jockey injuries, although I have not seen statistics on that). In addition, the number of horses racing each day has increased, most markedly in Northern California (my area), with new racing stables coming to California because of the safer racing surfaces. Finally, I understand that the handle has increased at every track following installation of the synthetic surface.
10. I was not a member of the CHRB at the time that the synthetic tracks were mandated. But I understand that studies addressing the issue of any possible long-term health effects of jockeys inhaling the material were fully considered.
11. As of this date, as I understand it, the issue of whether the synthetic track at Santa Anita is a problem because of the material or because of its installation is unresolved. In any event, the CHRB must do all that needs to be done to both ameliorate and ultimately remedy the serious situation that has arisen.

## Goals

1. Please provide a brief statement of your goals. What do you hope to accomplish during your term on the horse racing board? How will you measure your success?

I view success more as a journey than a destination. Horse racing is experiencing many challenges right now -- lack of profitability for the average horse owner/breeder/trainer, competing land uses for many of the current racetracks, an aging fan base, lack of media attention, competing gambling options, etc. CHRB's main role is to insure the high integrity of the sport and its participants, but I want to help promote the sport and business overall and urge all the stakeholders to work together to make improvements that will keep horse racing on a high plane and revitalize interest in it.

My goal in staying on the board is to provide continuity and to be able to urge all the disparate interests to better work together instead of getting into so many senseless fights. We also need to bring on board a new Executive Director, and solidify our existing staff and encourage professionalism at all levels of the organization. I want to stay around to support Chairman Richard Shapiro as he puts enormous time and energy into his job and it is enjoyable to work with him.

## Horse Racing Industry

2. How do you assess the future of horse racing in California? Is its financial future dependent on its ability to compete with gaming competitors?

I think racing in California has a future, it is just a matter of if it can be one that is financially viable or not. There will always be a desire for folks to race horses: that goes back thousands of years. The problem now is that costs have far exceeded revenues and the overall fan base has changed. I think racing provides an intellectual challenge wherein on a pari mutual basis every player can test their insight into a given race vs. everyone else's. We need to better sell the fun and excitement of that challenge and greatly widen our market. I think that properly managed, that can happen. Horse racing is the only gambling opportunity available in the home. That is a tremendous opportunity. We have only scratched the surface of Internet Wagering, and it can be racing's salvation.

While many states have been able to greatly supplement purses with revenues from non-related gaming such as slots, I don't think this is a good long-term solution. I am fearful that unless racing itself can be the motor driving the financial model that other revenue sources could be easily diverted elsewhere.

3. What steps, if any, would you recommend taking to increase attendance at racetracks? What role should marketing play in the effort to increase attendance and revenues?

Senate Rules Committee

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Appointments



Note that the attendance figures listed in Senator's December 19<sup>th</sup> letter are incorrect. In 1997 the total attendance at California racetracks and intrastate wagering facilities was 10,983,911 with 6,280,037 at simulcast facilities and 4,703,874 at live racetracks.

Our updated attendance total for 2006 was 8,162,521 with 4,625,521 off-track (CA simulcast facilities) and 3,537,000 at live racetracks, thus about 75% of 10 years earlier, but not the 25% noted.

The stalemates and declines we are seeing in on track attendance are disconcerting. Lots of things have been tried to reverse them, few successfully. Somehow we need to get potential fans engaged to want to be physically there to see a given horse, jockey, trainer, owner, race or something that creates their individual magnet. Free admission, better customer service, even better signage, etc. all have been mentioned and may help, but still we need the track to be more of a place where people want to go with friends to have fun. There have to be a lot of baby boomers out there looking for something to do.

Marketing is part of the equation, but it more than just marketing.

4. What role does horse racing at county fairs play in the future of horse racing in California?

I have always been a big supporter of the California Fair system, and agree that one of the purposes of horse racing law is to support the network of California fairs. The first race I ever attended was at the Big Fresno Fair. The Fair experience can get future fans inoculated with the excitement of racing. Fairs are generally on land that is dedicated to Fair uses and less likely to be developed for other things. Still, the racing element at the Fairs must make sense and be a popular attraction of the area and work hard to promote the overall sport and attract new fans. Particularly in Northern California as Bay Meadows closes, there is an immediate need for probably Alameda County Fair or Cal Expo to spend some money on their facilities for track upgrades and more stabling, and also create a spot on the overall racing calendar for dates in addition to their normal Fair dates. This is a cost effective way to insure that more than just one track (Golden Gate Fields) can serve the Bay Area/Northern California for both racing and year around training.

5. What is the board's role in addressing future track closures? Should the number of racing days be reduced, or should they be divided up among the remaining tracks?

The board should encourage an economic climate that discourages any track from closing. We need to realize that privately owned tracks do have options as to how they can use their property. A challenge the board has now is how best to reconcile the need for future planning and continuity of top scale racing with any given property owner's indecisiveness on their commitment to operate well into the future. I think

racing dates need to be allocated based on the total best interest of all the racing stakeholders--- horsemen, tracks, fans, the people employed in the many jobs racing entails both off and on track, the State, etc. It may take at least 2 or 3 years to find a suitable replacement for any track that decides to suspend operations. The CHRB needs to figure out some sort of defined policy that enables future planning, but forces no existing track out of business that will commit to racing some prescribed amount of time into the future. I think it should be an ever green type of a arrangement wherein a track agrees to stay in place for at least a couple of years into the future to get a license each year. There could be liquidated damages paid if a track breached their agreement, but what really needs to happen is a spirit of cooperation within the industry to assure a smooth transition.

#### Conflict of Interest

6. Has the board developed its own conflict of interest code? What is the status of this matter?

Yes--we have a detailed conflict of interest policy and it is available for review. Each commissioner has signed an acknowledgement of the policy and the board received training on it last year.

#### Gambling

7. How is the board addressing problem gambling?

The board does take problem gambling seriously, although I feel it is not as much of an issue in horse racing as it is in other types of gambling. Help lines are available both at operating tracks and satellites as well as on the ADW websites. I recall a small % of ADW wagering goes to a fund to aid problem gambling help groups.

8. Besides the referral to the Office of Problem Gambling that is on the board's Web page, does the board provide any other information or referral information for problem gamblers?

All track programs, etc. list references on help for problem gamblers. There is some money from racing wagering channeled into the fund that helps on this issue.

#### Synthetic Tracks

9. What has been the experience to date, in California with synthetic tracks? What levels of reduction in horse fatalities and jockey injuries has been experienced?

I feel the board decision to install synthetic tracks at California racetracks racing over 4 weeks a year led a national effort to better focus on horse and track safety. Horse fatalities and jockey injuries are both down. Detailed information is available. We all

realize that synthetic tracks are not a silver bullet, but they sure are an idea whose time has arrived. Not all synthetic tracks are alike, and we are on a learning curve to figure out what works best. The concept is sound.



Synthetic Surfaces  
-Mid-Atlantic TB.doc

Here is an article that outlines the issues.

10. Has the board undertaken a study of the possible long term health effects of jockeys inhaling the material from synthetic tracks?

Yes--The board itself has not commissioned a study, but there are detailed studies on this and it does not appear to be an issue. The studies are available for review. Let me know if anyone would like them.

11. Are the problems with the synthetic track at Santa Anita a problem with the synthetic material or with its installation?

There are serious issues with the Cushion track at Santa Anita, but they are working hard to rectify the problems. It appears that the mix in place right now at Santa Anita is not draining properly when rains occur and this has made the track unsuitable for racing. I am not sure what the answers are, but know tremendous efforts in time and money are being made to decide what to do. We will know more in the next few days.



**Statement of Goals and Priorities:**

1. What do you hope to accomplish during your tenure as a member of the Seismic Safety Commission? How will you measure your success?

During my tenure on the Seismic Safety Commission I would like to see a reduction of risks associated with earthquakes for all residents of California. I would accomplish this by working together with the other commissioners to investigate earthquakes, research earthquake related issues and recommend to the Legislature policies and programs needed to reduce earthquake risks. Because of my background, working for a public utility, I will also strive to ensure the critical lifelines provided by the utilities are available after an earthquake.

My success on the Seismic Safety Commission and that of the entire commission comes down to one question. Were we able to reduce the risks associated with earthquakes for the residents of California? There are a number of ways risk is reduced including: research, education, preparedness and legislation. I will feel successful at the end of my tenure if, through the work of the Seismic Safety Commission, individuals and companies in California better understand the risks associated with earthquakes and they have taken tangible actions to address those risks.

2. What are the short- and long-term priorities of today's commission?

The mission of the Seismic Safety Commission is to provide decision makers and the general public with cost-effective recommendations to reduce earthquake losses and expedite recovery. Short-term priorities include working with the Administration and Legislature to implement the initiatives identified in the California Earthquake Loss Reduction Plan. Identify and fund research-related earthquake risk reduction projects utilizing the California Research Assistance Fund (CRAF) settlement funds. Investigate and learn from the Niigata Earthquake of July 16, 2007 to mitigate earthquake risks in California. Finally, review seismic activities funded by the State and conduct public hearings on seismic safety issues.

Long term priorities for the Seismic Safety Commission include identifying a consistent funding source for the activities of the commission. Leverage the information gained through the research projects funded under the CRAF settlement to reduce the risks associated with earthquakes. Manage California's Earthquake Hazards Reduction Program. Provide a consistent policy direction for earthquake-related programs. Propose and review earthquake-related legislation. Recommend earthquake safety programs to governmental agencies and the private sector. Investigate and evaluate earthquake damage and reconstruction efforts following damaging earthquakes.

**Senate Rules Committee**

**JAN 28 2008**

**Appointments**



**Funding and Structure of the Commission:**

3. What is the commission's role in determining or recommending the most appropriate funding mechanism?

I believe it is up to the commission to come up with a viable long term funding mechanism to support its activities. To the extent the commission provides value funding should not be a problem. I believe these funding sources should come from both the public and private sector depending on the focus of the commission and the groups deriving benefits from its activities.

**Seismic Research:**

4. What is the status of awarding funds for these research projects? What criteria will the commission utilize in selecting research projects? What will your role be in this process?

To date five research projects have been approved by the commission as part of CRAF settlement funds. The approved projects include: Field Act Performance, Preparedness Survey, Tall Building Initiative, Distant Tsunami Threat to the Ports of Los Angeles and Long Beach and Los Angeles Earthquake: Get Ready. The CRAF settlement funds are restricted for research-related earthquake-risk-reduction projects. The commission evaluates the value of each research project relative to earthquake-risk-reduction and the cost and timeline associated with the project. The commission reviews and approves projects for funding during the Seismic Safety Commission meetings. During the December meeting the commission reviewed and approved three of the five projects identified above. I participated in the review and approval process in December and will continue to do so in future meetings.

5. Has the commission sought to coordinate this research with either the U.S. Geological Survey or the University of California's Pacific Earthquake Engineering Research Center?

Commissioner Lucy Jones is on the staff of the U.S. Geological Survey. Dr. Jones coordinates the research efforts of the Seismic Safety Commission with that of the USGS.

The University of California's Pacific Earthquake Engineering Research Center (PEER) is the primary earthquake engineering research arm of the State of California. Under law, the California Seismic Safety Commission is required to periodically monitor the work of PEER on the State's behalf and produce an independent evaluation of its progress. Through this oversight role the commission stays abreast of the research activities of PEER. The commission recently approved funding out of the CRAF settlement funds to partner with PEER on the Tall Building Initiative. This project will research the seismic vulnerabilities posed by future tall buildings.

**Status of Seismic Retrofitting of Hospitals:**

6. Has the commission reviewed the new risk-assessment tool for hospitals developed by FEMA? Did the commission have input into to the Building Standards Commission prior to its adoption of the new risk-assessment tool?

The commission staff has reviewed the new risk-assessment tool but the full commission has not. The commission will review the tool upon request from the Building Standards Commission at the end of the public comment period.

7. Can and should this new risk-assessment tool be used to evaluate the safety of dams and reservoirs?

The commission has not reviewed this tool and does not know the full extent of its capabilities.

**Japan Earthquake Investigation Team:**

8. What was learned from the first investigation team that can be applied to California?

In November of 2007 the Seismic Safety Commission sent an investigative team to Japan to learn lessons from the Niigata earthquake. The final report from the team will be reviewed by the commission at its February 2008 meeting. Areas of interest which will have relevance to California include: the Japanese earthquake early warning system, mitigation and educational outreach programs and the Japanese Earthquake Insurance Program.

9. What will be the focus of the second team on its investigative trip?

In February the commission will review the report from the first investigative team to Niigata, Japan and determine whether a second team should be sent. The purpose of the second team would be to view the impacts that the Niigata earthquake had on the world's largest nuclear power facility.





## MARK CHURCH

MEMBER, BOARD OF SUPERVISORS SAN MATEO COUNTY

January 28, 2008

The Honorable Don Perata, Chairman  
Senate Rules Committee Appointments  
Attn: Nettie Sabelhaus  
State Capitol, Room 420  
Sacramento, CA 95814-4900

Dear Senate President Pro Tem Perata,

Thank you for your letter, dated January 8, 2008, regarding the Senate Rules Committee confirmation of my reappointment to the Alfred E. Alquist Seismic Safety Commission (Commission). You presented a series of questions relevant to my appointment. Below are my answers to each of your questions.

1. *What do you hope to accomplish during your tenure as a member of the Seismic Safety Commission? How will you measure your success?*

The Commission has been active this past year and we have made significant progress. I would like to complete the projects that the Commission started, such as the Field Act Research Study, the Statewide Preparedness Survey, the Tall Building Initiative, and the Tsunami Risks Study relating to the ports of L.A. and Long Beach. We started building new partnerships with different entities, such as the State & Consumer Services Agency and I would like to foster those partnerships. I would like to continue sharing my expertise on local government on the Commission. As the Vice-Chair, I view my role as supporting the Chair to ensure the goals of the Commission are met. I would measure my success on being able to provide helpful seismic safety policy recommendations for the Legislature and the people of California.

2. *What are the short and long term priorities of today's Commission?*

The short-term priorities are to stabilize the funding for the Commission and to implement the earthquake research program. The long-term priority is to carry out public-private partnerships that will result in reduced losses and accelerated post-earthquake economic recovery.

**Senate Rules Committee**

JAN 30 2008

Received 01-29-2008 04:55pm

From-

To-SENATE RULES COMMITTEE

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**Appointments**



3. *What is the Commission's role in determining or recommending the most appropriate funding mechanism?*

The Commission's role is to identify numerous potential and permanent funding sources and funding partners. The Commission needs to look at all alternatives and determine what is best for the agency.

4. *What is the status of awarding funds for these research projects? What criteria will the commission utilize in selecting research projects? What will your role be in this process?*

So far, the Commission has a total of 6 projects approved, totaling \$1.6 million. We plan to move additional projects forward this year. The criteria will be consistent with the goals found in the California Earthquake Loss Reduction Plan, the State Plan for Earthquake Research, and the State Hazard Mitigation Plan. My role is to ensure transparency in the process, possibly serve on an advisory committee, determine usefulness of the projects, administer the use of the funds so it is consistent with the gift agreement and ultimately provides practical benefit to the public.

5. *Has the Commission sought to coordinate this research with either the U.S. Geological Survey or the University of California's Pacific Earthquake Engineering Research Center?*

One of our Commissioners, Dr. Lucy Jones, is a member of the U.S. Geological Survey and the Commission communicates regularly with the U.C. Pacific Earthquake Engineering Research Center (PEER). Furthermore, the Commission is collaborating on the Tall Buildings Initiative with PEER, and is providing PEER with funding and advice on this project.

6. *Has the Commission reviewed the new risk-assessment tool for hospitals developed by FEMA? Did the commission have input to the Buildings Standards Commission prior to its adoption of the new risk-assessment tool?*

The Commissioners and staff have participated in the development of the Hazards United States (HAZUS) model. The Building Standards Commission is reviewing the model, and may contact the Commission after the expiration of the public comment period, at which time the Commission will provide further assistance and input.

January 28, 2008  
Letter to Senator Perata  
Page 3

7. *Can and should this new risk-assessment tool be used to evaluate the safety of dams and reservoirs?*

It is possible but would require further evaluation.

8. *What was learned from the first investigation team that can be applied to California?*

The Commission has not heard a presentation on the Japan trip and has not reviewed the final report yet. However, the Commission approved the trip with the understanding that the team would investigate the early earthquake warning system, insurance issues, mitigation programs, education programs and economic recovery programs. The Commission will receive the draft final report at its February meeting.

9. *What will be the focus of the second team on its investigative trip?*

The second team will be advising the Energy Commission on the performance of a nuclear power plant that was damaged during the July 2007 Niigata earthquake.

Thank you for your consideration of my reappointment.

Sincerely,



Mark Church  
Member, Board of Supervisors  
San Mateo County

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that this is crucial for the company's financial health and for providing transparency to stakeholders. The text mentions that the records should be kept up-to-date and should be accessible to all relevant parties.

2. The second part of the document outlines the procedures for handling customer inquiries. It states that all inquiries should be handled promptly and professionally. The text provides a list of steps to follow when dealing with a customer, including listening to the customer's concerns, apologizing if necessary, and providing a solution as quickly as possible.

3. The third part of the document discusses the company's policy on employee conduct. It states that all employees are expected to adhere to a high standard of conduct at all times. The text lists several key areas of focus, including honesty, integrity, and respect for others. It also mentions that any violations of the policy will be dealt with strictly.

4. The fourth part of the document outlines the company's goals for the upcoming year. It states that the company aims to increase its revenue by 10% and to improve its customer satisfaction score by 5%. The text provides a detailed breakdown of the strategies that will be used to achieve these goals, including marketing campaigns, product development, and operational improvements.

5. The fifth part of the document discusses the company's commitment to environmental sustainability. It states that the company is committed to reducing its carbon footprint and to using sustainable materials in its products. The text mentions that the company has implemented several initiatives to achieve these goals, including energy audits, recycling programs, and the use of sustainable suppliers.



**Linda Budge**  
Mayor

**Dan Skoglund**  
Vice Mayor

**Ken Cooley**  
Council Member

**Robert McGarvey**  
Council Member

**David Sander**  
Council Member

January 29, 2008

Hon. Don Perata  
Chair  
Senate Rules Committee  
Room 420  
California State Capitol  
Sacramento, Ca. 95814

## **Senate Rules Committee**

JAN 30 2008

## **Appointments**

**RE: Commissioner Ken Cooley, City of Rancho Cordova  
Alfred E. Alquist Seismic Safety Commission Confirmation Submittals**

Dear Senator Perata and Colleagues,

Per your request, please find my response to your committee's inquiries below:

## **Statement of Goals and Priorities**

### **1. *What do you hope to accomplish during your tenure as a member of the Seismic Safety Commission? How will you measure your success?***

I sought appointment to the Seismic Safety Commission to further, on behalf of California's cities, Senator Alfred Alquist's vision of a California which uses its time well to steadily improve its state of readiness to weather the earthquakes we know are a part of living in earthquake country.

I believe the Commission's design -- as an internationally renown multidisciplinary body which fosters peer-to-peer collaboration among our state and nation's top emergency, engineering, and seismic specialists -- can be relied upon to formulate and refine practical insights that will save lives and property when a catastrophic earthquake strikes. Inasmuch as that day is inevitable in California, that prospect makes the Commission's ongoing work of vital importance.

The substantial consensus among informed scientists is that our state faces a shaking peril far greater than we endured in the highly disruptive, yet comparatively moderate Northridge and Loma Prieta earthquakes. In California, the Commission's work of collaborative engagement with thoughtful scientific, engineering and public and private responders is an important work for ongoing progress.



In addition to supporting a strong research agenda that is built on tapping the insights of California's world-renown seismic community, my personal goal will be to look for how the resulting insights can be advanced as matters of public policy and emergency readiness, whether at the local -- including schools -- and state or federal level.

As the California Assembly's last Chief Counsel of a combined Finance and Insurance policy committee, I worked through issues of the economic disruption due the Savings and Loan crisis as well as the turmoil due to the 1989 Loma Prieta earthquake.

My years of service to the State Legislature can be summed up in the conviction that "laws are ideas that acquire a following". In my service on the Commission, I will look for quality ideas that can help California better face the peril of its earthquake hazard. When I identify ideas of this character, that I believe merit gaining a broader audience and acceptance, I will work to advocate for and grow their following as appropriate in support of policymakers and lawmakers.

## ***2. What are the short and long-term priorities of today's commission?***

The most critical short term need of California's internationally renown Seismic Safety Commission is, paradoxically, preserving its existence.

Ongoing funding for the work of this unique collaborative body is uncertain.. This severely hobbles the ability of the Commission to formulate and vet a thoughtful and robust research agenda that can fruitfully apply scarce resources to important problems. For the long term, the Commission has a need to be developing a strong process for evaluating and recommending research endeavors that use time well to materially advance the safer, more secure California which was Senator Alquist's intended legacy.

## **Funding and Structure of the Commission**

### ***5. What is the Commission's role in determining or recommending the most appropriate funding mechanism?***

As stated above; I believe laws are ideas that acquire a following. The Commission's funding need is a need for an idea that can acquire a following as sound, meritorious, and feasible in relation to other competing priorities.

As a Commissioner, I will be alert to ideas that would seem to offer a reasonable basis to ensure that the Commission's vital readiness work is supported, and advanced. As I do so, I will make it a priority to assess whether any posited funding mechanisms would appear to support, or undermine, the inherent strength of today's multi-disciplinary Commission to weigh alternate research possibilities so as to settle upon and recommend priorities that offer the greatest public gains.

## Seismic Research

***4. What is the status of awarding funds for these research projects? What criteria will the commission utilize in selecting research projects? What will your role be in this process?***

As a new Commissioner, the ongoing work program of the Commission is a process that I am still becoming familiar with. Various research endeavors are underway which are expected to add insights on various areas of seismic preparation and readiness. As the Commission's funding base becomes stabilized, I anticipate an enhanced ability to collaborate as a clearinghouse of ideas with California's premier University and private sector earthquake engineering and seismological experts; as this is done, I believe the most compelling problems of public safety and readiness, that can be most materially advanced by a given level of research support, can be sorted out. I will be looking for research outcomes that support the fundamental vision of Senator Alquist to foster continual improvements in California earthquake readiness.

***5. Has the commission sought to coordinate this research with either the U. S. Geological Survey or the University of California's Pacific Earthquake Engineering Research Center?***

Again, speaking as a new Commissioner, I believe the collaboration with the U.S. Geological Survey is strong; I can not say at this time the depth of involvement with the University of California PEER Center, but as indicated, I will press for strong use of public and private engineering expertise in California to support the best and most valuable research outcomes for the Commission's work program.

## Status of Seismic Retrofitting of Hospitals

***6. Has the Commission reviewed the new risk assessment tool for hospitals developed by FEMA? Did the commission have input to the Building Standards Commission prior to its adoption of the new risk-assessment tool.***

The development of the HAZUS model was a process that was national in scope but which over a period of years engaged the active collaboration of the Seismic Safety Commission and its cadre of California expert seismic and engineering talent. As a Hospital specific variant of this model now goes before the California Building and Standards Commission, I anticipate that the Commission would assist, upon being asked, by helping the Building Standards Commission tap into the California expert community to the extent that is deemed valuable. As the state's only multi-disciplinary earthquake study organization, that is a clear area where the Commission can, when invited, add value through collaboration. I strongly support such collaboration; it constitutes the wholly unique value-added proposition that is inherent in the Commission's basic mission.

***7. Can and should this new risk assessment tool be used to evaluate the safety of dams and reservoirs?***

This is a question of the application of the general HAZUS model to the specific problems of dams and reservoir engineering and their tolerance for static and dynamic pressures. The answer

requires turning to engineers and others with specific expertise in this kind of seismic/engineering problem and then a thorough evaluation of the model's fitness "as is" or as adapted. I believe the HAZUS model is broadly accepted but in its application to specific engineering and risk estimate problems the need for refined adaptation must always be considered.

## **Japan Earthquake Investigation Team**

### ***8. What was learned from the first investigation team that can be applied to California?***

The initial visit focused on understanding the effects of the July 2007 Niigata Province earthquake on an area with similar perils to the Hayward Fault region of the San Francisco Bay Area. It also examined areas of severe damage as well as the preparations and response of the Japanese Civil Response community and its preparedness, including early warning network. A full report will be provided at a future Commission meeting.

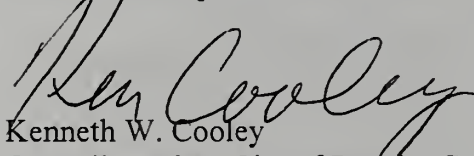
### ***9. What will be the focus of the second team on its investigative trip?***

AB 1632 of the 2006 Legislative Session (Chapter 722 of the Statutes of 2006) requires the California Energy Commission to study the states vulnerability to earthquakes and nuclear waste disposal. The 2007 Niigata Earthquake is notable for its impacts upon an operating nuclear facility, thus an enhanced understanding of the effects of that earthquake on the plant, its facilities, and its operational plans, including its post-disaster protocols will materially assist the Energy Commission in undertaking the work envisioned by AB 1632 of 2006.

The role of the Seismic Safety Commission in such a trip with the California Energy Commission is actually to allow California's State Seismic Safety Commission, because of its international renown, to help the Energy Commission obtain access to the highly sensitive plant and to bring its multi-disciplinary perspective to bear to make sure that the Energy Commission study takes note of all potentially relevant insights. In effect, the Commission attendees will function as ambassadors who help by opening doors in sensitive areas and expert consultants who help ensure that the fullest possible understanding of the earthquake's effects on facilities, operations, and plans is obtained by the Energy Commission.

Thank you for the opportunity to address these matters.

Onward and Upward,



Kenneth W. Cooley  
Councilmember, City of Rancho Cordova



Sharron Leason  
Seismic Safety Commission  
1/29/08

**1. What do you hope to accomplish during your tenure as a member of the Seismic Safety Commission? How will you measure your success?**

My hope is to bring the issues of seismic safety to the general public and in a way that affects their day-to-day activities. It is important that the Commission's work rely on scientific research and validation. It is equally important to make that information available and easily understandable for the public, particularly with the emergency management implications for earthquakes. I will measure my success by the active participation of the commission in public outreach and research efforts and projects to educate the public about earthquake risk and appropriate mitigation measures.

**2. What are your short- and long-term priorities of today's commission?**

The short-term priority for the commission is to identify and obtain secure funding for its continued operation. The long-term priority is cultivating partnerships with a range of organizations to not only expand the reach and message of the commission but also to leverage available funding to support the commission's mission.

**3. What is the commission's role in determining or recommending the most appropriate funding mechanism?**

California is unique with its Seismic Safety Commission and the leadership this entity provides to reduce earthquake risk. The commission requires a dedicated revenue stream to carry out its mission. With a July 2009 sunset date, the commission's role is to explore all funding options and funding partners. This includes participation as an individual and as member of the commission in exploring funding options and funding partners.

**4. What is the status of awarding funds for these research projects? What criteria will the commission utilize in selecting research projects? What will your role be in this process?**

Of the approximately \$6 million from the Gift Agreement, the commission has acted on five projects for \$1.3 million. This selection was based on review and recommendations for funding by commission staff, the commission, and Department of Justice staff.

The criteria used for selecting the research projects criteria include the following:

1. Consistency with the goals in at least one of three following documents: California Earthquake Loss Reduction Plan, State Plan for Earthquake Research, and State Hazard Mitigation Plan.
2. Ability to leverage funds and funding partners.
3. Usefulness of the product or outcome.

In addition, the project must be consistent with the conditions of the Gift Agreement. This includes there being a mechanism in place for review and approval of the project and a mechanism for tracking and monitoring expenditures consistent with the Gift Agreement.

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JAN 29 2008

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**Appointments**



Sharron Leao  
Seismic Safety Commission  
1/29/08

**5. Has the commission sought to coordinate this research with either the U.S. Geological Survey or the University of California's Pacific Earthquake Engineering Research Center?**  
Currently, there is a USGS representative on the Seismic Safety Commission, which ensures constant coordination between the two agencies and their staff. In addition, the commission has a long-standing relationship with the Pacific Earthquake Engineering Research Center, and the commission has approved PEER's Tall Building Initiative as one of its joint research projects.

**6. Has the commission reviewed the new risk-assessment tool for hospitals developed by FEMA? Did the commission have input to the Building Standards Commission prior to its adoption of the new risk-assessment tool?**

For the past several years, the Commission staff has been engaged with FEMA in previewing the Hazus tool to determine how others have used the tool in California and nationally and to see if it has application in California. Commission staff has looked at the tool for building facilities other than hospitals.

The commission has not addressed Hazus, nor has the commission been asked to comment on its use. The commission staff has engaged with the Building Standards Commission and Office of Statewide Health Planning and Development on use of the tool and has provided technical comments. The Building Standards Commission is in the public comment period for adoption of the tool and the commission will assist upon request.

**7. Can and should this new risk-assessment tool be used to evaluate the safety of dams and reservoirs?**

The commission has not evaluated the tool for other infrastructure categories.

**8. What was learned from the first investigation team that can be applied to CA?**

The commission has not received a presentation from the investigation team nor seen a draft of the final report recommendations. It is premature to comment on lessons learned or on the applications for California until the commission receives the investigative team's briefing. The commission will hear and see the report at its 2/14/08 meeting.

The four areas that the first team investigated were: 1) early earthquake warning system, 2) insurance systems, 3) mitigation programs, and 4) economic recovery.

**9. What will be the focus of the second team of its investigative trip?**

The second investigative trip will focus on follow-up issues relative to earthquakes and nuclear power plants.

January 29, 2008

Nettie Sabelhaus  
Rules Committee Appointments Director  
Room 420, State Capitol  
Sacramento, CA 95814

**VIA FACSIMILE: (916) 445-0596**

**Senate Rules Committee**

Subject: Elizabeth Mathieson Confirmation Hearing for  
Alfred E. Alquist Seismic Safety Commission

JAN 30 2008

**Appointments**

Dear Ms. Sabelhaus:

This letter presents my responses to the questions contained in Senator Don Perata's letter of January 8, 2008, which are part of the preparation for the confirmation hearing for my appointment to the Alfred E. Alquist Seismic Safety Commission. As a new commissioner, I have participated in only two meetings to date: the December 13, 2007, meeting, and the January 25, 2008, teleconference. Therefore, I am not able to provide substantive answers to all of the questions. In this letter, each of Mr. Perata's questions appears before my answer:

1. *What do you hope to accomplish during your tenure as a member of the Seismic Safety Commission? How will you measure your success?*

I hope to use my skills of explaining technical concepts to laypeople in the distribution of significant findings from the Japan Earthquake Investigation Teams' reports and from the various commission-funded Earthquake Research Program and Projects reports. The findings from each project must be distributed to the policy-makers, researchers, and/or members of the public who can best use the information to increase earthquake safety in California. The findings must be presented in formats and language appropriate to the audience, taking into consideration that for most audiences, plain wording is more effective than technical jargon. As the geologist member of the commission, I anticipate that I will be asked frequently by other commissioners and staff to help them understand new information on earthquakes, whether from the commission's own work or from outside sources. I will measure my success by tracking the frequency with which I am asked for advice or assistance, and I expect to see that frequency increase steadily with my time on the commission.

2. *What are the short- and long-term priorities of today's commission?*

During my two meetings as a commissioner I have learned that securing continued funding for the commission is a high priority, both for the short and long term. A short-



Nettie Sabelhaus  
January 29, 2008

term priority, that will be renewed each year that California Research Assistance Fund money is available, is to insure that funds for the commission's Earthquake Research Program and Projects are awarded to applicants whose projects will provide the maximum benefit to California. Also in the short term, a commission priority is to evaluate the benefits of the Field Act for school construction and to determine whether it is in the interest of public safety to require that community colleges and currently exempted public schools be designed and constructed in accordance with the Field Act. A significant long-term priority is to continue coordination with federal, state, and local agencies and private industry on public education for earthquake preparedness and planning for earthquake recovery.

3. *What is the commission's role in determining or recommending the most appropriate funding mechanism?*

The commission is starting to discuss possible funding sources, potential funding partnerships with various organizations, and the possibility of a dedicated stream of funding for the commission's activities. Each commissioner has been asked to be alert for possible new funding mechanisms and to evaluate possible funding sources identified by various commissioners and commission staff. I trust that we will receive input from agency finance staff regarding the feasibility of the various funding sources that we evaluate.

4. *What is the status of awarding funds for these (California Research Assistance Fund) research projects? What criteria will the commission utilize in selecting research projects? What will your role be in this process?*

The commission has approved funding for six projects, including one at its October 2007 meeting which we reviewed in December, three at our December 13 meeting, one at our January 25 teleconference, and one before I joined the commission. For each proposal we evaluate the project's budget, its potential for developing partnerships between the commission and the applicant entity, and its contribution to earthquake safety in California. The project goes through commission and staff review and approval and is evaluated for consistency with the purposes of the California Research Assistance Fund gift agreement. My role is to review, comment on, and approve (if appropriate) fund applications and, currently, to serve as the commission liaison to the NOAA project that we recently approved: "The Distant Tsunami Threat to the Ports of Los Angeles and Long Beach, California."

5. *Has the commission sought to coordinate this research with either the U.S. Geological Survey or the University of California's Pacific Earthquake Engineering Research Center?*

Commissioner Dr. Lucy Jones is an employee of the U.S. Geological Survey and takes an active role in the review and discussion of the merits of each application for the commission's Earthquake Research Program and Projects, providing expertise to the

Nettie Sabelhaus  
January 29, 2008

commission as well as serving as the commission's liaison to the U.S. Geological Survey.

The Pacific Earthquake Engineering Research (PEER) center is a successful applicant for research funds. At our December 13 commission meeting we approved \$350,000 in funding for Task 12 of PEER's Tall Buildings Initiative, which is intended to provide information on the seismic performance of buildings taller than 240 feet that are being designed using alternative designs rather than standard building code provisions. I understand that PEER and the commission are in close communication on other activities of mutual interest.

6. *Has the commission reviewed the new risk-assessment tool for hospitals developed by FEMA? Did the commission have input to the Buildings Standards Commission prior to its adoption of the new risk-assessment tool?*

Any commission discussion of this issue predated my appointment to the commission.

7. *Can and should this new risk-assessment tool be used to evaluate the safety of dams and reservoirs?*

I am not personally familiar with the details of FEMA'S HAZUS flood loss estimation methodology and do not know whether it is designed for use in evaluating the safety of dams and reservoirs. The HAZUS software has a generally good reputation among engineers and therefore should be considered among the possible tools for estimating the safety of dams and reservoirs, if it has that capability.

8. *What was learned from the first (Japan earthquake) investigation team that can be applied to California?*

Secretary Rosario Marin made a brief presentation on the first team's trip at our December 13 commission meeting. The team's findings are to be summarized in a PowerPoint presentation that was postponed to our upcoming February 14 meeting. Additional information will be included in the team's written report, a draft of which we are scheduled to review at our February 14 meeting. Therefore, my information on the team's findings is incomplete. Nevertheless, I understand that Japan's newly deployed public earthquake early warning system was of major interest to the team as a prototype for a system that may save lives in California. Other issues examined by the first team that may be of use in California deal with earthquake insurance, mitigation programs to reduce damage and injuries, and expediting post-earthquake economic recovery.

9. *What will be the focus of the second team on its investigative trip?*

The second team's focus will be a review of the damage to the world's largest nuclear plant during the July 2007 Niigata earthquake, in order to develop information that can be used in the California Energy Commission's evaluation of risks to large power plants as mandated by AB 1632. The three-member investigation team plans to meet with

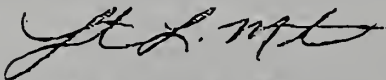


Nettie Sabelhaus  
January 29, 2008

representatives of the plant owner—the Tokyo Electric Power Company—as well as the Japan Atomic Energy Agency; hear a presentation on Japan's earthquake early warning system, especially as it relates to nuclear power plants; visit the damaged power plant; and visit a second Japanese nuclear power plant—in Shizuoka—at the request of the governor of that prefecture, to meet with plant owners and regulators. After the trip the commission will advise the California Energy Commission of the team's findings.

Please let me know if you or Committee members have any questions about my responses or any aspect of my background or qualifications for membership on the Seismic Safety Commission. Thank you for considering my application.

Sincerely,



Elizabeth L. Mathieson

**GARY L. MCGAVIN, AIA**  
ARCHITECTURE - PLANNING - SEISMIC DESIGN

January 29, 2008

via FAX

Nettie Sabelhaus  
Senate Rules Committee Appointments Director  
State Capitol, Room 420  
Sacramento, CA 95814

Regarding: Gary L. McGavin, AIA  
Alfred E. Alquist Seismic Safety Commission  
Senate Confirmation for Reappointment

Dear Ms. Sabelhaus;

It gives me great pleasure to have the opportunity to respond to the questions posed by Senator Perata for my reconfirmation to the Alfred E. Alquist Seismic Safety Commission. My responses to Senator Perata's questions are listed below:

**Statement of Goals and Priorities**

- 1 *What do you hope to accomplish during your tenure as a member of the Seismic Safety Commission? How will you measure your success?*

Seismic Safety has always been a high priority for me both in my academic and professional career. I am educated in both Geology and Architecture which I believe is a good marriage for my position on the Commission representing Architectural Planning. My professional career as a licensed architect has centered on public and institutional design with a heavy emphasis in K-12 school design. I also teach architectural structures and earthquake design at California State Polytechnic University, Pomona. My education and profession keep me abreast of the needs of California with respect to seismic safety.

Over the years, as a Commissioner, I have witnessed a growing interest from a variety of sources to downgrade the earthquake safety of California's public schools (K-12) by either eliminating or restricting the Field Act. I am opposed to this move as a Commissioner. While serving as the Chair of the Commission, I initiated a third set of Field Act Hearings wherein the Commission took testimony regarding the relevance of the Field Act and its employment. These hearings lead in part to the adding of the State Architect as a full member of the Commission through legislation that redefined the Commission in many ways.

**Senate Rules Committee**

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**Appointments**

The Field Act hearings also lead to the Commission identifying several areas of concern that we have begun to address. One of these is to quantify the actual performance of Field Act approved public schools vs. non-Field Act schools in actual earthquake events. The Commission has entered into an agreement to study this issue so that we can guide policy in the State of California with respect the facts regarding Field Act designed schools. We will keep the Legislature informed as this needed research project progresses.

There are numerous areas of concern for seismic safety that I have for the future of the Commission. These include the ever present danger of a major earthquake that could cripple the infrastructure of California (the southern leg of the San Andreas Fault is over one-hundred years "overdue"), the deteriorating levees in northern California, tsunami, millions of square feet of non-ductile reinforced concrete structures throughout California are but just a few of my concerns for Seismic Safety in California.

I believe that a stable funding source is key for the survival of the Commission.

I will judge my success by having the opportunity to brief the Legislature and the Administration on key seismic safety issues/policy as they arise. In the past, many Commissioners have seen the Commission as an opportunity to propose legislation for Seismic Safety. As the Chair of the Commission, I took a different route with the Commission. I do not believe that the Commission should be sponsoring as much legislation as we have in the past. I believe that we should be a resource to the Legislature and the Administration on seismic policies.

2 *What are the short and long term priorities of the Commission today?*

It is difficult to speak for the Commission as a whole. We have many new Commissioners that have not yet had an opportunity to express their vision for the Commission. Consequently, I realistically can only speak for myself as a Commissioner. I believe that the Commission has a responsibility to the Legislature, the Administration and the people of California to offer honest and truthful counsel when called upon as a body of experts in a variety of fields with respect to Seismic Safety.

**Funding and Structure of the Commission**

3 *What is the Commission's role in determining or recommending the most appropriate funding mechanism?*

I believe as a Commissioner that California as a whole will benefit from a stable long term funding mechanism. Currently, the Commission is not funded from the General Fund, but rather mainly from private insurance premiums. The original thought for this source was to spread the funding for Seismic Safety in California across a wide spectrum of those that would benefit from a solid and secure



Commission. The Administration asked the Commission to propose potential alternative funding sources which we have over the past two years. The Commission proposed approximately a dozen potential sources including allowing the Commission to raise its own operating revenues through public/private partnerships. There is a slight misconception in some arenas that the Commissions Research Funds can be used for operation expenses. These funds have been determined by the court to not be available for operating expenses but rather must be used for research (such as the aforementioned Field Act Research).

While the Commission can propose funding sources, we can not enable the funding. The Legislature and Administration have the ultimate responsibility with assigning viable long term stable funding for the Commission. I personally believe that the insurance premium funding source meets its initial intent and I believe that the Commission and the State of California could greatly benefit is we were allowed to set up public/private partnerships as a funding source.

### **Seismic Research**

- 4 *What is the status of awarding funds for these research projects? What criteria will the Commission utilize in selecting research projects? What will your role be in these projects?*

The Commission has awarded several projects including the Social Sciences study, the Tall Buildings study, the East Bay Utilities Infrastructure study, the Tsunami/NOAA study and the Field Act Performance study. The criteria that the Commission established under my tenure as Chair of the Commission included the establishment of a Research Committee that is charged with defining potential research projects and making recommendations to the full Commission for their eventual approval/disapproval for research proposals.

Once awarded, these research projects will have periodic performance reviews and reports to the Commission. My personal role will be the greatest in the review of the Field Act study as I am chairing that committee.

- 5 *Has the Commission sought to coordinate this research with either the USGS or the University of California's Pacific Earthquake Engineering Research Center?*

The Commission does not want to reproduce or duplicate any efforts in our research programs. Consequently, as a matter of course, we are in contact with a number of appropriate agencies, institutions and societies for each of our research projects prior to issuing the request for proposal.

### **Status of Seismic Retrofitting of Hospitals**



- 6 *Has the Commission reviewed the new risk-management (HAZUS) tool for hospitals developed by FEMA? Did the Commission have input to the Building Standards Commission prior to its adoption of the new risk-assessment tool?*

The Commission did review HAZUS when it was the development stages by FEMA in its initial form. OSHPD reviewed and modified HAZUS as a tool for use with hospitals in California. The Commission has not reviewed HAZUS for the Building Standards Commission. The Building Standards Commission has its adoption out for its 45 day public comment period. At the end of this time, if the Building Standards Commission asks for the Commission to offer guidance, the Commission will then respond to the Building Standard's request.

- 7 *Can and should this new risk-assessment tool be used to evaluate the safety of dams and reservoirs?*

This is a difficult question. As a licensed architect, I do not have any particular expertise in either dams or reservoirs. There are many dam and reservoir types (earth fill, rubble, earth fill/concrete faced, masonry, concrete, etc.) for which HAZUS must be modified to accommodate.

Probably a better question, would be ... "is HAZUS an overarching 'silver bullet' for hazard mitigation in California that can be easily and accurately modified to fit all building/structure types"?

I believe that we must exercise strong care in seeking a single model solution to very different and complex building/structure types. The outcome of a HAZUS model is only as good as the confidence of the data run through the model which in and of itself makes many assumptions.

### **Japan Earthquake Investigation Team**

- 8 *What was learned from the first investigation team that can be applied to California?*

I was the Chair of the Commission when the offer was made to accept a visit to Japan by the Commission and its representatives. This team had a seminal opportunity to meet with key individuals and visit/review a much different philosophy of seismic preparedness from our own. This was an opportunity that we could ill afford to miss.

Japan had recently initiated an Early Seismic Warning System. This is not a prediction tool, but rather a tool to provide notification of an earthquake already in process such that key decisions could be made automatically such as drop-cover-hold, initiating emergency power startups, etc. This tool could have a significant impact for all of California. The Commission has long studied the viability of such early warning systems beyond the existing Tri-Net with "off-the-shelf" technology

such as p-wave notifiers. In addition to this, the team wanted to focus on social aspects of recovery, education and outreach programs. All of these issues are vitally important to seismic policy in the State of California. I believe that this trip afforded the State of California an excellent opportunity to meet with experts in foreign seismic policy that will pay large dividends to all Californians especially with respect to early warning systems that I believe should be the norm in California.

9 *What will the focus of the second team on its investigative trip?*

The second trip will focus on Japan's Nuclear Power Industry. This is an unparalleled opportunity for the State of California. It is VERY difficult to gain access to any of Japan's nuclear facilities. It is through the contacts of a former Seismic Safety Commissioner, Lloyd Cluff of PG&E, that we have this opportunity. It is the intent of the Commission to involve Assemblyman Blakeslee as the Assembly representative of the Commission on this trip. Assemblyman Blakeslee has the Diablo Nuclear Plant within his Assembly District and was the author of AB1632 to study the seismic safety of California's Nuclear Power Facilities and waste disposal.

Please feel free to call me if you have any questions or require any additional information.

Sincerely,



Gary L. McGavin, AIA  
Member, Alfred E. Alquist Seismic Safety Commission



**Board of Supervisors  
County of San Bernardino**

**BRAD MITZELFELT**  
SUPERVISOR, FIRST DISTRICT



January 29, 2008

Hon. Don Perata, Chairman  
Attn: Nettie Sabelhaus, Appointments Director **Senate Rules Committee**  
Senate Committee on Rules  
State Capitol, Room 420  
Sacramento, CA 95814

JAN 30 2008

**Appointments**

Re: Alfred E. Alquist Seismic Safety Commission Confirmation: Bradley Mitzelfelt

Dear Sen. Perata:

In response to your letter of January 8, 2008, please find the enclosed, updated copy of my Form 700, Statement of Economic Interests, as requested. Please also find below my responses to the questions you provided in the aforementioned January 8 letter.

I understand this information is related to my scheduled confirmation hearing, which is scheduled for February 13, 2008.

Responses to Questions from Jan. 8 Letter

**Statement of Goals and Priorities**

1. *What do you hope to accomplish during your tenure as a member of the Seismic Safety Commission? How will you measure your success?*

Increasing public awareness and preparedness are at the top of my list. The campaign recently funded by the Commission to produce creative, high-impact public awareness messages is an example.

In the preparedness area, San Bernardino County has a growing Community Emergency Response Team (CERT) program. The county and numerous cities are working together to train residents to respond to disasters. Especially during a time of limited resources, we must do all we can to make sure people are prepared individually and in their neighborhoods. The CERT program is the kind of program that can benefit from Commission support. The Commission must build partnerships with local jurisdictions and agencies to maximize resources and outreach. The



Hon. Don Perata  
Page 2

Dare-to-Prepare Campaign is another example of numerous agencies and organizations getting together to push for awareness and preparedness.

I would measure the success of this by the number of people trained and partnerships formed. The Commission is also working on a survey about preparedness, which will provide a measure of how effective the Commission's efforts are.

The Commission is an effective clearinghouse for research that can help us understand and prepare for the risks we face. At the same time, we must continue to form partnerships with universities, other agencies, non-governmental organizations and the private sector to leverage our resources for maximum gain. The Commission is already doing this with the projects being funded.

The quality of the research products produced, and the strength, productivity and durability of the partnerships the Commission forms will be key measures of success.

2. *What are the short- and long-term priorities of today's commission?*

The Commission's short-term goal is to identify a stable source of funding and be reauthorized by the Legislature. There is no greater threat to disaster-prone California than powerful earthquakes, regardless of budget constraints. The Commission performs a vital, cost-effective service for the residents of California.

Longer-term, the Commission must continue to develop Public-Private Partnerships to maximize the opportunities for awareness, preparedness and research. These relationships must become well established and secure to provide the Commission flexibility in identifying sources of expertise and funding as it continues to make the State ready for earthquakes.

**Funding and Structure of the Commission**

3. *What is the commission's role in determining or recommending the most appropriate funding mechanism?*

We must examine all potential sources of funding, and establish a stable mechanism for funding the Commission. While the final decision is up to the Legislature, the Commission should have input in how it is going to be funded. I support efforts to have the Commission work with the

Hon. Don Perata  
Page 3

Department of Finance to identify possible sources. That funding source should be as reliable and predictable as possible, without posing an undue burden on taxpayers.

Earthquakes are the greatest hazard facing the state and the state should provide a steady revenue stream to allow this important work to continue. As a relatively small organization, the Commission has, and will continue, to make every effort to leverage the funds we have with NGOs, other government agencies, universities, and the private sector.

The Commission is doing important work to deal with tremendous need at little cost.

The scenario that most affects my area, a magnitude 7.8 rupture on the southern section of the San Andreas Fault, will be the subject of the Golden Guardian exercise later this year. Our county has a large number of Unreinforced Masonry Buildings; wide areas are subject to devastating liquefaction; Interstate 15 through the Cajon Pass could be severed, and long stretches of Interstate 10 could be severely damaged. Such an earthquake would be devastating to my county, and research indicates that even Los Angeles would be gravely affected.

In addition to programs such as Community Emergency Response Team, our county has provided extensive information on preparedness on its website and I have created a page for earthquake information on my own website.

Each of the Commissioners should advocate for seismic safety issues and I have been aggressively doing that.

This is a cost-effective organization with dedicated people and partners. The state should make it a priority to provide a stable funding source so the commission can continue this important work.

### **Seismic Research**

4. *What is the status of awarding funds for these research projects? What criteria will the commission utilize in selecting research projects? What will your role be in this process?*

The commission has funded five projects so far totaling \$1.35 million:

Hon. Don Perata  
Page 4

Household Preparedness Survey, \$350,000. This will allow the Commission to gauge the public's understanding of the earthquake threat and commitment to preparedness, along with helping us determine the most effective way of reaching out to the public.

Performance of Field Act School Facilities, \$350,000. This 18-month study by the Collaborative for Disaster Mitigation will compare the performance of how public and non-public schools have performed in significant earthquakes. This is an opportunity to quantify how one of the state's earliest and most important seismic safety laws has protected our children and others.

Tsunami Scenario for Ports of Los Angeles and Long Beach, \$50,000. This study dovetails with, but does not duplicate, work being done through the Governor's Office of Emergency Services regarding the threat of tsunamis from a major earthquake in the Pacific Northwest. It will look at several tsunami scenarios in great detail as they would affect the ports, through which 40 percent of the nation's imports pass.

Tall Buildings Initiative, \$350,000. With a number of tall buildings either proposed or under construction in Los Angeles and San Francisco, it is critical to understand how these buildings will perform in an earthquake. This study will look at how certain materials and construction practices affect performance, and will determine if higher performance standards are necessary.

Art Center of Design: Southern California Earthquake Scenario, \$250,000. A creative, high-quality outreach program will be created to coincide with the "Shake-Out" series of events in November, which also includes the Golden Guardian disaster exercise. An earthquake resource book for the media will be developed and distributed. A public-awareness campaign and a unique civic event to publicize the need for preparedness is also part of the contract.

There are several criteria used in selecting research projects. A project first must tie into one of the goals in the State Hazard Mitigation Plan, the California Earthquake Loss Reduction Plan, or State Plan for Earthquake Research.

Project readiness and the usefulness of the proposed product are also important. Any research effort must be consistent with conditions imposed by the court in transferring the funds. And, as always with the



Hon. Don Perata

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Commission, we seek opportunities to leverage the funds by tapping other sources or forming partnerships to make the dollars go as far as possible.

As a member of the Commission, my role will be to evaluate these proposals and to encourage partnerships that make research as complete, effective and useful as possible.

5. *Has the commission sought to coordinate this research with either the U.S. Geological Survey or the University of California's Pacific Earthquake Engineering Research Center?*

Lucy Jones is a member of the Commission and a preeminent scientist with the USGS, so the Commission is a natural partner in seeking appropriate research opportunities. The previously mentioned Tall Buildings Initiative is being done by the Pacific Earthquake Engineering Research Center.

The Commission is always ready to form partnerships to leverage our resources and conduct research that is readily applied to mitigation or preparedness.

#### **Status of Seismic Retrofitting of Hospitals**

6. *Has the Commission reviewed the new risk-assessment tool for hospitals developed by FEMA? Did the Commission have input to the Building Standards Commission prior to its adoption of the new risk-assessment tool?*

The Commission has not yet reviewed HAZUS but staff has provided input to the Building Standards Commission and the Office of Statewide Health Planning and Development. If requested, the Commission will assist the Building Standards Commission at the end of the public comment period.

7. *Can and should this new risk-assessment tool be used to evaluate the safety of dams and reservoirs?*

The Commission has not discussed the use of this software for other infrastructure. If this tool were determined to be robust enough to accurately predict the performance of dams and reservoirs, then it would be a welcome addition to our arsenal for identifying and quantifying threats.



Hon. Don Perata  
Page 6

Safety of the public must be our top priority. If there were substantive questions about the accuracy of the tool, then I would not support its use.

### **Japan Earthquake Investigation Team**

**8. *What was learned from the first investigation team that can be applied to California?***

The findings from the first team have not yet been presented to the Commission. A draft report is due to be presented at the meeting in February, with final adoption scheduled for April. The team was to focus on economic recovery, insurance, earthquake education and outreach, and social issues. State and Consumer Services Agency Secretary Rosario Marin accompanied the first team and gave a brief, partial update to the Commission in December. She said she was impressed with Japan's building and educational programs. The team also looked at the country's early warning system and she suggested California consider implementing such a system.

Japan once again was faced with a devastating earthquake in a populated area. With threats like the Puente Hills Fault directly beneath Los Angeles, the Hayward Fault in the Bay Area and the San Andreas Fault, we must take every opportunity to learn as much as we can.

**9. *What will be the focus of the second team on its investigative trip?***

The July 2007 earthquake was the most costly disaster, in terms of dollars, in the world last year, including damage to the world's largest nuclear power plant. The second team will work with the California Energy Commission in looking at impacts to the power infrastructure. The trip will include a trip to the reactor, a meeting with officials of Japan's nuclear regulatory agency, and a look at the early warning system.

Given how recent storms affected the grid in California, this is a critical area to examine. Our ability to mitigate possible impacts to the power system and to recover quickly after an earthquake is vital to getting Californians back on their feet after an earthquake.

This is another example of a useful partnership the Commission has established.

Hon. Don Perata  
Page 7

Thank you for your consideration of my confirmation to the Alfred E. Alquist Seismic Safety Commission. Should you require additional information or clarification of my responses, please contact me at (909) 387-4830.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brad Mitzelfelt', with a stylized flourish at the end.

Brad Mitzelfelt

Encl. (1) Updated Form 700 Statement of Economic Interests



January 28, 2008

Ms. Nettie Sabelhaus  
Rules committee Appointments Director  
Room 420  
State Capitol  
Sacramento, CA 95814

Re: Confirmation of Donald R. Parker to the Alfred E. Alquist Seismic Safety Commission

Dear Ms. Sabelhaus:

Thank you for providing me the opportunity to respond to your questions regarding the pending Senate confirmation of my being appointed to the Alfred E. Alquist Seismic Safety Commission.

#### **State of Goals and Priorities**

**1. What do you hope to accomplish during your tenure as a member of the Seismic Safety Commission?**

I have no personal goals as a member of the Commission, other than to do my best to insure that California is as safe as possible from the effect of future earthquakes.

**How will you measure your success?**

It is difficult to measure if an individual's contribution merits the title of "success". Hopefully, there will be no seismic event that would require one to undergo such an analysis. The local and state response immediately following Hurricane Katrina was woefully inadequate. Those officials who were charged with preparedness, response, and recovery failed due to a lack of informed policy. Those who were responsible in Louisiana for advising the state and local officials were not successful in that endeavor. As Chairman of the Commission, it is my intention to help provide seismic information necessary for California's decision makers to adequately respond to future earthquakes. It is my intention to attend all regular and special meetings of the Alfred E. Alquist Seismic Safety Commission and carry out assignments to the best of my ability.

**Senate Rules Committee**

**JAN 30 2008**

**Appointments**



**2. What are the short and long term priorities of today's commission?**

A key phrase in the Mission Statement of the Commission is to provide "cost-effective recommendations". The Commissions impact on the general fund is minimal. However, because of the current budget crisis, it is important that we as commissioners remember our mission statement and make our recommendations accordingly.

**Short Term Priorities:**

- a. Seek sources for continued funding for the commission
- b. Acquaint myself with newly appointed Commissioners
- c. Work closely with the Executive Director on upcoming agenda's.

**Long Term Priorities**

- a. Oversee the CRAF projects
- b. Monitor and report on the Field Act
- c. Coordinate with other State agencies on establishing and implementing a state wide "Earthquake Preparedness Day"

**Funding and Structure of the Commission**

**3. What is the commission's role in determining or recommending the most appropriate funding mechanism?**

The commission should make use of the expertise of the individual commissioners to explore possible alternative funding. The commission should work with the Executive Director while he pursues other funding mechanisms within the California State and Consumer Services Agency and the Department of Budget and Finance.

**Seismic Research**

**4. What is the status of awarding funds for these research projects? What criteria will the commission utilize in selecting research projects? What will your role be in this process?**

As a commissioner, I will acquaint myself with all proposed projects and once I have determined if the proposed projects are worthy of funding, I will support the item as it appears on the monthly agenda. Furthermore, I will diligently monitor the progress of all projects once they have received funding. To date the commission has authorized the funding of 6 projects.

They are:

- a. Field Act Building Performance Project
  - b. Household Mitigation and Preparedness Project
  - c. Tall Building Initiative
  - d. Los Angeles Earthquake: Get Ready, Art Center college of Design
  - e. East Bay Utility Corridor Seismic Performance Assessment, PG&E and Technical Oversight Group
  - f. Distant Tsunami Risk to Ports of Los Angeles and Long Beach, National Oceanic and Atmospheric Administration
5. Has the commission sought to coordinate this research either the U.S. Geological Survey or the University of California's Pacific Earthquake Engineering Research Center?

Yes

### **Status of Seismic Retrofitting of Hospitals**

6. Has the commission reviewed the new risk-assessment tool for hospitals developed by FEMA? Did the commission have input to the Buildings Standards Commission prior to its adoption of the new risk-assessment tool?

I am not familiar with the new risk-assessment tool.

7. Can and should this new risk-assessment tool be used to evaluate the safety of dams and reservoirs?

This and every means of measuring the effectiveness of all programs and projects should be used if feasible.

### **Japan Earthquake Investigation Team**

8. What was learned from the first investigation team that can be applied to California?

It is my understanding that the Japanese Earthquake Investigation Team's efforts were beneficial. Initial reports suggest that there is much to be learned from the failure of the nuclear power plant in Nagata Prefecture. Also, the earthquake early warning program was of great interest. It is also my understanding that Ms. Rosario Marin, Secretary of State and Consumer Services will be issuing a report on the findings of the Investigation Team.

9. What will be the focus of the second team on its investigative trip?

The second team will work with the Department of Energy, PG&E and other state and federal officials to view the damage at the Nagata nuclear power plant. Furthermore, they have been invited by the Governor of the Shizuoka to tour their nuclear power plant.

Please do not hesitate to contact me at if you have any further questions.

Sincerely,

Donald R. Parker

Ali M. Sadre

January 14, 2008

Nettie Sabelhaus  
Rules Committee Appointments Director  
Senate Rules Committee  
State Capitol Room 420  
Sacramento, CA 95814-4900

**Senate Rules Committee**

JAN 23 2008

Dear Sir or Madam:

**Appointments**

This is a response to your letter dated January 8<sup>th</sup>, 2008 regarding the necessary information for the confirmation hearing scheduled on February 13<sup>th</sup>, 2008. Please see attached for an updated Form 700, Statement of Economic Interest for 2008, as well. The following presents the responses to the questions as outlined in your above referenced letter.

1. What do you hope to accomplish during your tenure as a member of the Seismic Safety Commission? How will you measure your success?

I hope to promote public safety and reduce the risk to California residents due to earthquake hazards. This includes protecting our public schools, universities, essential facilities, as well as other public/ or private structures, transportation and utility infrastructures at large. Various tools may be utilized towards achieving such awareness campaigns, for example, media broadcasts, public service announcements on TV, radio, social network websites such as U-Tube, or office and work environment EQ safety-tip posters through Cal OSHA.

I will measure my success by the public's awareness of the impending risks associated with seismic activity and their readiness to deal with the aftermath of such major event(s) with realistic expectations. Currently, the majority of the public are unaware that our buildings are not designed for continued function, nor are they designed to minimize financial damage, but only to provide life-safety (collapse prevention), so building occupants can escape having saved their lives.

2. What are the short- and long-term priorities of today's Commission?

Short term, the Commission's focus will be on the financial turmoil in Sacramento due to the colossal budget deficit.

The long-term goals are to secure more reliable and independent sources of funding to maintain a steady and self-sustaining body to act as California's government and legislature policy-advisor on seismic related issues.



3. What is the Commission's role in determining or recommending the most appropriate funding mechanism?

The Commissioner's role should be to proactively collaborate with their respective representative organizations, such as The Structural Engineers Association of California (SEAOC) and others to solicit donations from member organizations (e.g. structural engineering firms) to promote seismic safety in the State of California. This will be in addition to other avenues of funding such as a surcharge on home and/or business insurance policies, property taxes, or utility bills to fund the Commission's activities.

4. What is the status of awarding funds for these research projects? What criteria will the Commission utilize in selecting research projects? What will your role be in this process?

Six projects have been awarded so far for a total of \$1.2M. Two presentations have been rescheduled for our February meeting in Sacramento.

The funding criteria used consists of the project's relevance, budget, tangible applications, interdisciplinary nature, transparency, experience of the principle investigators and their team as well as their interaction with other institutions or organizations such as the UC system, USGS, or PEER center, etc.

My role is to ask challenging questions regarding the objectives, deliverables, the team's expertise and to ensure the Commissioners' participation and input in the process at various steps as required.

5. Has the Commission sought to coordinate this research with either the U.S. Geological Survey or the University of California's Pacific Earthquake Engineering Research Center?

Yes, there is a direct correlation between the research that is being sponsored or sanctioned by the Commission and the endeavors undertaken by both the USGS and the PEER center. In fact, the Commission's funding of research projects are often considered with valuable input from Dr. Lucy Jones, the USGS chief scientist, bearing in mind the USGS's goals and objectives.

6. Has the Commission reviewed the new risk-assessment tool for hospitals developed by FEMA? Did the commission have input to the Buildings Standards Commission prior to its adoption of the new risk assessment tool?

As I understand, the Commission's staff has had active input in both the developed software by FEMA as well as the Building Standard Commission's decision to adopt these new assessment tools for hospitals. However, these events took place prior to my joining the Commission, so my firsthand knowledge in this area is limited.

7. Can and should this new risk assessment tool be used to evaluate the safety of dams and reservoirs?

I need to study this issue further by obtaining information on the software's applicability, cost, reliability and accuracy as well as any case studies that have been done in general and for the specific applications to our dams and reservoirs.

8. What was learned from the first investigation team that can be applied to California?

I have been told the focus of the first investigative team was to assess the early warning systems, the infrastructure damage, and the emergency responders' reaction to the disaster, as well as the insurance coverage, loss estimation and response of claim adjusters to the insured.

A presentation by the first team participants was rescheduled for the February meeting due to lack of time during our December meeting. A more detailed discussion is anticipated.

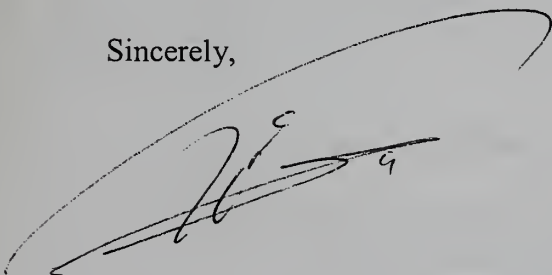
Lessons to be learned may include implementation of an early warning system statewide or laying the foundation work for building such an integrated network with gradual funding over the next decade or two.

9. What will be the focus of the second team on its investigative trip?

Damage assessment to the nuclear reactor will be the focus of the second team scheduled to be dispatched in March. Reportedly, this was the worst nuclear disaster the country has ever experienced with the facility being shut down indefinitely. Lessons from this experience maybe applicable to our nuclear facilities on the west coast.

Please do not hesitate to contact me with any additional questions of concerns at my office (858)560-1468.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ali Sadre', with a large, sweeping flourish above it.

Ali Sadre

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1. What do you hope to accomplish during your tenure as a member of the Seismic Safety Commission? How will you measure your success?

Through supporting the commission's work on earthquake safety, I hope to accomplish the following three things in the event of any future earthquakes in California:

- a. Reduced loss of life
- b. Reduced damage to property
- c. Reduce overall economic impact on the California economy.

This will be measured/estimated as part of the funding decisions for projects and monitored through the acceptance/denial of implementing final recommendations. There is also a possibility to measure these in post event of actual versus what could have occurred had recommendations not been enacted.

2. What are the short- and long-term priorities of today's commission?

The most important priority the commission currently faces in the short term is to secure stable funding.

As far as longer term priorities for the commission, these include cultivating new partnerships and relationships with other departments and organizations in the pursuit of the overarching commission goals and efforts.

3. What is the commission's role in determining or recommending the most appropriate funding mechanism?

The commission's role is to explore all options for securing stable funding which can include private partnerships. This will entail, among other things, leveraging the strengths of each commissioner's backgrounds, expertise, and relationships.

4. What is the status of awarding funds for these research projects? What criteria will the commission utilize in selecting research projects? What will your role be in this process?

Five projects have been identified with an estimated cost of \$1.3M.

The criteria used for selecting projects will include:

1. An evaluation of how each align with the following three plans:
  - a) State Hazard Mitigation Plan
  - b) State Plan for Earthquake Research
  - c) California Earthquake Loss Reduction Plan
2. Project readiness
3. In line (consistent) with court agreement

**Senate Rules Committee**

JAN 28 2008

**Appointments**



4. Leverage of other funds and partnerships
5. Usefulness of the anticipated outcome

My role, in general, will be to leverage my insurance background for the betterment of these projects. More specifically, review and understand each of the projects, offer general input, offer specific input from an insurance perspective since that is my background and role on the commission, question, vote on approvals/denials, review and comment on progress reports, and review and offer comment on final conclusions.

5. Has the commission sought to coordinate this research with either the US Geologic Survey or the University of California's Pacific Earthquake Engineering Research Center?

Lucy Jones, who is a commissioner on the California Seismic Safety Commission, works for USGS. In addition, the Tall Buildings initiative is working in concert with the University of California's Pacific Earthquake Engineering Research Center.

6. Has the commission reviewed the new risk-assessment tool for hospitals developed by FEMA? Did the commission have input to the Buildings Standards Commission prior to its adoption of the new risk-assessment tool?

Staff has been engaged in the use of the HAZUS tool, with various state agencies, including its use for hospitals. Upon request, the commission will assist the Buildings Standards Commission at the end of the public comment period.

7. Can and should this new risk-assessment tool be used to evaluate the safety of dams and reservoirs?

The commission has not looked at the use of HAZUS for evaluating dams or reservoirs.

8. What was learned from the first investigation team that can be applied to California?

The commission has not been briefed on the Japan trip yet. A briefing is planned to occur at the February commission meeting.

9. What will be the focus of the second team on its investigative trip?

To date, specific details of a second trip have not been discussed.

January 23, 2008

Nettie Sabelhaus  
Rules Committee Appointments Director  
Room 420  
State Capital  
Sacramento, CA 95814


**Re: Request For Answers To Confirmation Hearing Questions And Updated Form 700**

Nettie,

Per the enclosed request, you will find corresponding answers to the posed questions below. Also, enclosed you will find the requested Form 700 update.

Should you have any questions or concerns with any of these materials, please don't hesitate to contact me. I will be happy to assist you with any further information you may need.

Regards,



Mike Stevens

**Senate Rules Committee**

JAN 28 2008

**Appointments**



January 21, 2008

Nettie Sabelhaus  
Rules Committee Appointments Director  
Room 420, State Capitol  
Sacramento, CA 94814

Dear Ms. Sablehaus:

Thank you for your January 8, 2008 letter. I am honored to have the opportunity to serve on the California State Bar Board of Governors. Please find below my responses to questions for use by the Senate Rules Committee during my February 13, 2008 confirmation hearing. I understand that I am not required to appear.

### **Role of the State Bar**

*The State Bar's primary role is to protect Californians from the unethical or unauthorized practice of law.*

*The State Bar is governed by a 23-member board of governors, with six public, non-attorney members. The Board of Governors establishes policy and guides the operation of the State Bar. The State Bar is the administrative arm of the California Supreme Court in matters involving the admission, regulation, and discipline of attorneys.*

### **Goals**

1. Please provide us with a brief statement of goals. What do you hope to accomplish during your time on the State Bar Board of Governors? How will you measure your success?

#### ***Answer:***

*I want to see the discipline process streamlined. Clients deserve to have their complaints adjudicated in a timely manner. I'm also concerned about problem lawyers continuing to practice in the interim.*

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*I also want to monitor the impact of the planned changes to the Lawyers Assistance program (LAP). I'm concerned that some lawyers may be using the program to avoid or delay disciplinary action.*

*I hope to raise the profile of the California Bar foundation and other organizations that encourage lawyers to offer legal services to the poor and non-profits. I'm very impressed by the work they do but feel more money could be raised and more recognition gained by a revised media campaign.*

*I will consider my role a success if I've been an effective advocate for proper fiscal management, public protection and increased access to justice by low income Californians. To accomplish this I need to be properly prepared prior to meetings, regularly attend the meetings, fully engage in board deliberations and build relationships with other board members.*

2. What training did you receive for your role as a State Bar Board member? What yard sticks will you use to evaluate the State Bar's performance?

**Answer:**

*In September 2007 at the State Bar's Annual meeting, I participated in the annual new Board Member Orientation conducted by the State Bar's Deputy Director, Robert Hawley. The content of the orientation ranged from key staff and organizational charts, expense forms, to an overview of the agency, "core" functions, and governance.*

*Additionally, at the Board's November 2007 meeting, I participated in the first of several planned "rolling" orientations that consisted of presentations on — "What is the State Bar and what is its Mission?" "What is our role as a member of the Board of Governors?" and "How is the State Bar Organized?" The orientation also included a tour of the Bar's Los Angeles offices and presentations by Admissions and disciplinary staff as well as the judges of the State Bar Court. Both sessions were very helpful.*

*As a non-lawyer, I have also spend a great deal of time meeting with lawyers from large firms, small firms, solo practitioners, minority firms and law school deans to gain a broader knowledge of the issues facing the profession. Lastly, I was recently advised that staff had completed production of an online "Board Resource Library" which consists of comprehensive resources regarding the State Bar and the Board of Governors.*

*Upon joining the Board in May 2007, I was appointed to the Board's Planning, Program Development, and Budget Committee ("PPDB") and the Regulation, Admissions and Discipline Committee ("RAD"). Currently I continue as a member of the "RAD" committee and am the Vice-Chair of the Member Oversight Committee ("MOC").*

*In regards to yard sticks believe that each board member has a responsibility to ensure that the Bar carries out its mandates and does so in the most efficient and effect way possible — and to ensure that this occurs, I fully intend to exercise my role in providing policy oversight and supervision of the Bar's staff through its executive director.*

### **Building Fund Assessment**

A majority of the State Bar's operations are paid through annual membership fees authorized by statute. Existing law allows the State Bar to charge active attorneys \$400 in annual dues, including \$315 in annual membership fees, plus miscellaneous fees, such as a \$10 fee for the building fund.

In April 2007 the state auditor reported that the State Bar continued to collect the building fund fee even though the purpose for which it was originally authorized had been satisfied. The auditor reported that in January 2007 the Board of Governors passed a resolution authorizing the continued collection of the building fund fee in order to accumulate funds for the future purchase of a State Bar facility in Los Angeles.

Taking this action without legislative authorization is contrary to the oversight role the judiciary committees have traditionally played prior to the State Bar entering into any agreement for construction, purchase, or lease of a State Bar facility. As a result of the state auditor's findings, Senate Bill 686 (Corbett), Chapter 474, Statutes of 2007, was amended to delete the building fund fee.

3. Were you briefed about the State Auditor's report when you became a member of the Board in May 2007?

*Answer: Yes, I received a copy of the State Auditor's report and I was present when the Board was briefed on the State Auditor's report and the status of SB 686 (Corbett) at the May meeting.*

4. What is your understanding of the process for entering into agreements to construct purchase, or lease as State Bar facility? Do you believe the Legislature should be a part of that process? If so, what role should it play?

*Given legislative oversight and the ultimate approval by both the Legislature and the Governor's Office of the State Bar's funding, I understand—that public officials need to be consulted and ultimately approve all plans for the real property acquisition and staff housing. Throughout this process, I will work to ensure that all stakeholders are kept of apprised of the developments, as appropriate.*

*I fully support the notion that the Bar must consult with and ultimately obtain legislative input and approval of any recommendations related to our future facilities need. The appropriate legislative officials must be engaged prior to finalizing a recommended course of action.*



*The Bar's lease in Los Angeles will not expire until 2014. As I understand it, the State Bar has already retained a qualified expert in Los Angeles-area commercial real estate to advise the Board and perform detailed analysis to determine the most cost effective approach given market conditions, space needs and other factors. After consultation with the experts and a Board consensus on the most cost effective approach based on this analysis, the State Bar will again consult with the Legislature and invite legislative review and input as to the proposed plan of action. My understanding is that Board consideration and decisions on specific properties must necessarily be done in closed session. Once there is a consensus on a specific property, however, we will engage in an open and competitive bidding process for construction, or an analysis of lease space needs, costs and negotiations for the purchase or lease of a facility.*

### **California State Auditor Report**

In April 2007 state auditor report identified a number of problems at the State Bar besides the building fund issue described above. These problems include

- State Bar departments not completing the strategic planning process;
- annual budgets not tied to strategic planning process;
- problems in the administration of the Legal Services Trust Fund Program; and
- On-going problems in the processing of disciplinary cases contributing to a backlog resolving these cases.

SB 686 requires the State Bar to submit a report on its progress in addressing the problems outlined above to the Senate and Judiciary Committees, with a copy to the state auditor. This report is due January 10, 2008.



5. How do you think that the Board of Governors should oversee and respond to the problems raised in the April 2007 state auditor's report?

*As I have stated previously, board members should ensure that the Bar carries out its mandates efficiently and effectively.*

*We received and reviewed the bar's required 60-Day Status Report filed with the State Auditor on June 20, 2007, indicating that the State Bar was pursuing an aggressive strategy to address the specific concerns raised by the State Auditor. The June 20<sup>th</sup> 60-day status report also noted that revisions to the 14 departmental plans were completed and submitted on April 30, 2007. The State Bar described a plan to "catch up" on its monitoring visits of legal services programs by the end of 2007 and improve staff compliance with the bar's policy of conducting random audits of case files by supervising trial counsel and assistant chief trial counsel.*

*As a member of the PPDB, I had the opportunity to review and recommend for Board approval the State Bar's new budget format that aligns the Bar's budget with of its strategic planning process. The new format makes it easier to understand the bar's functions and how its resources are allocated. The Board approved the 2008 budget at its July 20, 2007 meeting.*

6. Please indicate the status of the report required to be submitted to the Legislature under SB 686. Is it on track to be completed by the statutory deadline?

*The report required by January 10, 2008 under SB 686 was timely submitted to the Senate and Judiciary Committees on January 8, 2008. At the January 12, 2008, Board meeting, I was updated on the status and content of this report. Of particular significance to me, the January 8<sup>th</sup> report showed that the State Bar has caught up and is current on its schedule of monitoring visits to Legal Services Trust Fund. I believe that staff has been responsive to the recommendations of the state auditor as summarized in this report.*

*Finally, the report provides a full accounting of the building fund issue – information that the bar's staff failed to clearly and timely communicate to the Legislature during last year's session.*

### **Professional Liability Disclosure Proposal**

The Board of Governors is in the process of reviewing a proposal to require the attorneys to disclose to the State Bar and the clients whether they have professional liability insurance. The Regulation, Admissions and Discipline Oversight Committee, of which you are a member, met to discuss this proposal on December 13, 2007, and voted 4-3 to require notice to a client of the absence of insurance whenever it is reasonably foreseeable that the lawyer will represent the client legally in a matter for more than four hours. This proposal will be sent to the full Board of Governors for review.

### **How does the State Bar propose to enforce the attorney disclosure requirement?**

*I favor insurance disclosure, and believe the information is material to consumers/clients and, frankly, I would have liked to see stronger requirements placed on attorneys. I view this as a means of making the public more informed when choosing legal representation. Twenty-three states have now adopted some form of an insurance disclosure rule and the ABA adopted a model insurance disclosure rule in 2004.*

*On December 13, 2007, the Regulation, Admissions and Discipline Oversight Committee voted to release for public comment a new insurance disclosure rule. The proposed rule would require direct disclosure of the absence of insurance to the client only, but would not require disclosure to the State Bar. If adopted by the Supreme Court as proposed, a lawyer who violates the rule will be subject to appropriate disciplinary action by the Bar. Investigation and any enforcement proceedings would begin if a client complained to the State Bar about a violation of the rule.*

7. The committee also voted to recommend that the State Bar study ways to help make professional liability insurance more affordable and available to attorneys. How do you believe the State Bar should help address this issue, particularly regarding small firm and solo practitioners?

*Currently, the State Bar sponsors a Professional Liability Insurance program that is tailored for and marketed to small firms and solo practitioners. The program is designed to add an additional market for California lawyers that will remain stable and available in the up and down business cycle associated with liability insurance. I am told by staff that the State Bar's program is the second largest California program, behind Lawyer's Mutual, and insures about 6000 members, the vast majority of whom are in 1 and 2 person offices.*

*I believe that the market cost and availability for insurance will improve with a larger pool of insured lawyers. "Affordable insurance," however, remains a challenge and what is "affordable" is subjective with widely varying expectations among lawyers about the cost doing business and what is a reasonable cost given their income. There is no carrier of last resort, and unless the legislature mandates an attorney malpractice professional liability program, similar to the State Compensation Insurance Fund, and the cost of malpractice insurance, like all types of insurance coverage, are driven by each lawyer's individual claims history and market place forces beyond the State Bar's control. To ease the insurance burden, the State Bar professional liability program recently added a "starter" policy with \$100,000 / \$300,000 limits for new State Bar admittees. The goal of the new admittee program is to impress upon new attorneys the importance of building the costs of professional liability insurance into their overhead and business plan.*



## **Diversity of State Bar Membership**

The August 2006 report from the State Bar's Diversity Pipeline Task Force stated that the most recent State Bar membership survey, conducted in 2001, shows that only 17 percent of California lawyers are persons of color, and other groups such as women lawyers and attorneys with disabilities are also not well represented when compared to California's overall demographics.

**What role do you believe the State Bar should play in helping to ensure that there is better minority representation in the bar?**

*While the State Bar has a stated and demonstrated commitment to diversifying the legal profession, it should be noted that mandatory dues cannot be used to promote this diversity agenda due to legal constraints. The State Bar uses only voluntary contributions to promote the diversity agenda articulated in its Strategic Plan, which specifically identifies diversity as a key organizational goal.*

*I am pleased that the State Bar's diversity goals are consistent with my own views in this area. That is, the overall bar membership should mirror the population demographics of the state. I agree with the Bar that a diverse legal profession:*

- *is more responsive and sensitive to community needs*
- *provides more effective representation in the local community, as well as in the growing global marketplace*
- *enhances the public image of the profession and the judiciary, and*
- *raises the public confidence in the legal system*

*In this context, the State Bar serves as a convener bringing together various stakeholders in forums to address diversity issues. The State Bar also provides demographic information, data and resources addressing the status of diversity in the profession, information that has helped stakeholders, such as the Legislature and Governor's Office, to develop and pursue their own diversity initiatives impacting the legal profession and judiciary.*



*The State Bar's current diversity initiatives are centered in the Council on Access & Fairness, created by the Bar in 2007 to serve as a diversity pipeline "think tank." The Council currently is engaged in strategic planning to confirm key strategies and to develop priorities over the next two years impacting the diversity pipeline from the early education pipeline, to colleges and law schools, the legal profession and the judiciary. The strategies will be shared with key stakeholders at an annual forum, providing stakeholders with the opportunity to engage in dialogue with the Council on diversity pipeline priorities.*

*I had the pleasure of attending the Diversity Pipeline summit in Los Angeles in 2007 and the judicial outreach meeting by Assemblyman Mike Davis at the California African American Museum.*

*I strongly support these efforts and will do all I can to ensure their continued success.*

# CALIFORNIA LEGISLATURE

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NETTIE SABELHAUS  
APPOINTMENTS DIRECTOR

## SENATE RULES COMMITTEE

DON PERATA  
CHAIRMAN

December 21, 2007

John W. Corbett

Dear Mr. Corbett:

The Senate Rules Committee will conduct a confirmation hearing on your reappointment to the North Coast Regional Water Quality Control on February 13, 2008. We have prepared the following questions to which we would appreciate your written responses.

When we receive your responses, we will determine whether you need to appear in person before the Rules Committee or whether your confirmation will be taken up without requiring your appearance.

Please provide your responses by January 11, 2008.

### Statement of Goals

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the North Coast Regional Water Quality Control Board? How will you measure your success?*
2. *What do you believe are the most serious problems facing your regional board? What actions is your board taking to address these issues?*

### State and Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, particularly considering these are part-time positions.

3. *Do you receive adequate support from the state board and regional board staff to assist you in better understanding some of the complex issues before you? If not, where do you seek help when you need it?*

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop Total Maximum Daily Loads (TMDLs), and enforce permit and discharge requirements as well as state and federal water quality laws. However, regional boards' budgets are not reviewed individually by the governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided through the state board appeals process instead of through a consistent statewide policy that is proactively established by the state board and implemented by the regional boards.

4. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?*
5. *How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing?*

### **Regional Board Governance**

Each regional board is made up of nine members, but most of these boards have vacant seats. Currently, the North Coast board has three vacancies. At the December 6, 2007, board meeting, only the minimum number of members required for a quorum were present.

6. *Are there reforms to the structure of state and regional boards that you would recommend to increase their effectiveness?*

### **TMDLs**

A number of regional water quality control boards are behind schedule in developing and implementing TMDLs, which are required under the federal Clean Water Act to improve water quality by limiting the amount of pollutants in water bodies.

7. *Please describe the status of your board's TMDL process.*

8. *How will the board monitor and enforce TMDLs it has or will adopt?*
9. *To what extent are unmet funding requirements impeding the timely development of TMDLs, in particular the Klamath Basin? What changes could the regional board effect to speed up the development of these TMDLs?*
10. *What role could the state and regional boards play to ensure and facilitate compliance with TMDLs once they have been developed? For example, should the state provide financial assistance to help local governments comply with TMDLs requirements?*

### **Nonpoint Source Pollution**

Nonpoint source pollution, or polluted runoff, is created when water picks up contaminants from pesticide use, mining, logging, and a multitude of other sources, and deposits them in water bodies. According to the State Water Resources Control Board, nonpoint source pollution is a major cause of degradation of the state's waters.

11. *What are the major contributing sources to nonpoint source pollution in your region? What recommendations do you have to address nonpoint source pollution?*

### **Sediment-Impaired Watersheds**

Sediment-impaired waters is a prevalent issue in your region, caused by a variety of sources including roads, timber harvesting, and agriculture. At the December 6, 2007, board hearing, during your staff's presentation of the public review draft of the Work Plan to Control Excess Sediment in Sediment-Impaired Watersheds, staff noted that there are 27 sediment-impaired watersheds in the North Coast region. Staff described the work plan as a "wish list," prioritizing projects by watersheds, regional tasks, and tasks within each watershed.

12. *What factors should be considered in the prioritization of projects for improving sediment-impaired watersheds in your region?*
13. *What tools can your board use to most effectively address the sedimentation problems facing the region?*

### **Blue Green Algae**

For several years blue green algae blooms have been found in the Klamath River, Big Lagoon, and the Eel River. According to the Department of Health Care Services, the



algae and the toxins it produces can cause skin rashes, skin and eye irritation, allergic reactions, gastrointestinal upset, and at high levels of exposure, serious illness or death. During this past summer and fall, health warnings were posted in your region because of high levels of toxic algae in the Klamath River.

14. *What is the extent of blue green algae blooms in the North Coast region?*
15. *What level of science on blue green algae do you believe should trigger regulatory action by your board? Do you believe the board should address the issue of blue green algae blooms? If so, how?*

### **Enforcement of Water Quality Laws**

The office of the secretary of the California Environmental Protection Agency reported to the Legislature on environmental enforcement and suggested that the state and regional water quality control boards were among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never sought criminal penalties for serious violations, and generally did not aggressively pursue violators.

16. *What enforcement options do you believe provide the most effective tools for violation of board orders?*
17. *What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?*

Please send your written responses to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,



DON PERATA

DP:JR

cc: Water Quality Control Board, North Coast Region

Senate Rule Committee  
State Capital  
Room 420  
Sacramento, CA. 95814-4900

January 14, 2008

Dear Don Perata:

I would request the opportunity either before during or after my confirmation to meet with the appropriate Senate staff to have a more in depth discussion of: a) Regional Board efforts to adopt a sediment amendment, b) elk and freshwater c) the use of waivers as a regulatory device, d) consistency, concerns, e) the role of science and the burden of proof in water quality regulation, f) perspectives on the Forest Practice Act exemptions from waste discharge requirements and g) concerns of the Senate.

1. Statement of Goals.

I would like to start off first with what has been accomplished during my old term. Improvements were made to the beneficial uses designations of the Porter-Cologne Act. The Porter-Cologne Act requires the consideration and designation of past, present, and future probable beneficial uses. The SWRCB has slightly changed this to existing and potential beneficial uses. In a pending court case one judge has ruled that the potential beneficial uses are different than future probable beneficial uses. A review of the Basin Plan when I began my service had all the categories only consisting of present beneficial uses. I have worked to add potential beneficial uses as well. This category is vitally important for impaired watersheds where there used to be salmon runs and where in the future there can be salmon runs. The second major accomplishment was getting recognition for cultural beneficial uses to reflect the subsistence fishing of native peoples. As former Senator Chesbro noted in a letter of support irrigated agricultural and subsistence fishing are the two biggest beneficial uses in the Klamath watershed. They both need to be recognized.

The North Coast Regional Water Quality Control Board timber waiver initially was opposed by environmental groups. Over the years that has changed to support as it is the most environmentally protective of all the timber waivers and at the same time is well received by industry. Federal lands constitute over 50% of the forest lands in Region One. The waiver for the USFS provides the option for waste discharge requirements in cases where cumulative impacts require such regulation. In the past

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waivers did not allow the requirement of waste discharge requirements even if otherwise warranted. I heavily participated in the drafting of that waiver. That waiver included specific provisions for regulating watersheds suffering from cumulative impacts. An innovative watershed wide waste discharge permit was adopted for PALCO in the Elk and Freshwater watersheds. In the Shasta watershed 303 (d) impaired watershed TMDL provisions were made for cold water quantities to protect fish and wildlife.

#### Goals:

The creation of a Eureka sub-office. The large area Central Valley Regional Board has two office locations. The California Department of Forestry, Department of Fish and Game, Coastal Commission and Regional Air Board all have offices in Eureka. On the Federal side the USFW and NMFS have Humboldt County offices as well. Such an office will cut travel and hotel costs substantially. My goal is to establish a sub-office by sharing space with an existing state agency within two years. I believe this will improve environmental regulation and increase the speed of review for dischargers as well.

Improve Regulatory Coordination: There are more and more Habitat Conservation Plans, Incidental Take Permits, and programmatic stream bed alteration permits throughout the Region. My goal is to have more up front water quality input into the process of developing such environmental protections. Where appropriate waste discharge permits and waivers can be coordinated with these larger permits.

Elk and Freshwater: The existing watershed wide permits need to be followed up on. Goal number one is to work with the new State Water Resource Control Board enforcement unit to insure that existing Clean Up and Abatement Orders are complied with. Second: We need to move to what I call phase II which involves treating the symptoms of past erosion and restoration of the watershed. The symptoms are flooding and raising the level of county roads and bridges to prevent flooding may well be required. Removing logs and excess sediment is needed to restore the watersheds to health and to prevent flooding. The watershed permit dealt with restricting timber cutting. A more comprehensive solution of limiting road erosion will be needed in the future. The 303 (d) impaired watershed planning process is moving swiftly to conclusion and should provide valuable information for these efforts.

Klamath Basin: The Regional Board has completed the first phase of the Scott and Shasta TMDL's. Work is also progressing on the main stem of the Klamath and the multi-state TMDL with Oregon. It is important to keep these planning processes moving forward. Both spring and fall Chinook salmon runs are in decline to the detriment of the entire West Coast fishery.

Dioxin in Humboldt Bay. The SWRCB has listed dioxin in Humboldt Bay as a problem. Humboldt Bay produces 50 to 70% of the commercial oysters for the State of California. There are simply no 303 (d) TMDL funds available for many years. There is a need to avoid doing nothing for the upcoming decade and hoping nothing happens health wise to the oyster industry. The solution would be to get a local working group that in effect could produce a TMDL plan for the review of the Regional Board. Such a local group would have to have the support of the environments, local governments, and business. There is a tremendous challenge in bringing the quite divided local community together to address this problem. The Regional Board is helping to sponsor a symposium at Humboldt State University and is hoping that this can be used as a vehicle to get acceptance of a science based approach and to draw the community together.

Ethnic Goals: The North Coast Region has large acreage natural resource based Tribal groups, consisting of some of the largest Native American populations in California within its boundaries. By and



large the Tribes and native peoples are poor, are so rural casino's would provide little revenue and have extremely strong fisheries and environmental departments. The goal would be to build a stronger more sensitive government to government relationship with these Tribal Governments and have a better exchange of the science. The North Coast is experiencing a rapid Hispanic population growth. So far this ethnic change has not been reflected much in local governments. During the upcoming years the Regional Board needs to find ways to respond and include all groups of the North Coast.

## 2. Serious Problem

Sediment is the most serious problem facing our Regional Board. In the logging activity the greatest need is in addressing roads and especially legacy roads. For the counties it would be having upgraded road ordinances. Best management practices in selected agricultural areas would also be helpful. The Regional Board is addressing these issues through the TMDL planning process. Currently, the Regional Board is considering a new Region wide sediment amendment. This will need to be followed up with General Waste Discharge Requirements and waivers that establish best management practices.

There is a need to shift towards being a Basin Planning process. There has been significant progress since there has been TMDL funding but more is needed. Conceptually, the Porter-Cologne Act mandated an ongoing planning process. In reality there was a big push for the initial Basin Plans and then only incremental reviews occurred. The Basin Planning process was meant to be much broader than the TMDL process. However, the TMDL process is using the Porter-Cologne Act Basin Plan amendment process. This provides us with an opportunity to comprehensively review our existing Basin Plans. In order to deal with cumulative impacts and to prevent cumulative impacts in the future the Regional Board needs to give a greater emphasis to comprehensive Basin planning.

Klamath Basin: See above and attached letter to Senator Wiggons.

3. Do you receive adequate support from the State Board and Regional Board staff to assist you in better understanding some of the complex issues before you? If not, where do you seek help when you need it?

Some years ago the SWRCB was viewing itself as primarily an appellate body to hear appeals of the Regional Board. This cut off communication between state board staff, created an attitude we are the final decider, and tended towards narrow precedential decisions that were hard to apply to other facts. The current Chair Tam Doduc has viewed the SWRCB as having a larger role in setting state wide policies and otherwise providing guidance to the Regional Board. This has started up the process of opening up communications and the use of mutual expertise. She also has a better appreciation of regional differences. In the past when I asked for advice from SWRCB staff how they wanted something handled there was no answer as they might be involved in an appeal. More and more they answer they can't speak for the SWRCB but based on past SWRCB decisions and a staff preferences the following approaches should be tried. The Legislature should encourage the SWRCB and Board Chair in these changes.



Evaluations of Regional Board attorneys now includes the Regional Boards. This is increasing accountability in the legal advisory system.

The SWRCB has set up a state wide enforcement unit. This will result in experienced prosecutor types to go after chronic violators and should be of great service to the Regional Boards. The challenge of our Regional Board will be to quickly adapt and use this great resource. The system should also result in greater consistency in fines throughout the State of California.

4. What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so how?

Your introductory statement says "regional boards' budgets are not reviewed individually by the governor or the Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

This statement doesn't catch the essence of staff and budgetary decisions. In 1967 the State Legislature gave the preparation of the State wide budget to the SWRCB and that includes the Regional Boards. While specific positions are filled at the regional board through hiring decisions the actual number of positions by category and technical expertise, pay classifications and other matters is made by the SWRCB. They often disagree with our priorities and don't fund positions as we would like. In circumstances where the legislature has added budget provisions to particular Regional Boards this often gets opposed and undone further up the chain of command.

Where there is overlap in watersheds between Regional Boards the SWRCB should require the Regional Boards to work together if they are not doing so already. Where there are different regulations within the same watershed that are based solely on differences between Regional Boards the SWRCB should immediately use their Porter-Cologne Act provisions to take the matter up and establish consistency.

It does appear that many of the NPDES industry permits can be further standardized.

The federal Clean Water Act has provisions that provide very little review of beneficial uses and mandates certain consistent secondary with a best practicable technology sliding scale over time approaches by industry type regardless of the discharge area. One advantage of such an approach is that you have competitive consistency. The Porter-Cologne Act is more orientated towards protecting actual beneficial uses. Differences in the watershed, the taking into account of cumulative impacts and other factors will often result in inconsistent decisions for industry compared to the Federal Act. My guess is that the State Legislature does not want the Lahontan Regional Board to issue consistent permits to discharge waste and sediment into the pristine and very clear Lake Tahoe. Note a similar exception was passed by the legislature in the Forest Practices Act for Lake Tahoe.

Cumulative impacts require stricter standards to restore beneficial uses.

Lastly, watershed planning approaches are site and watershed specific by definition. This will result in some variations or why have the watershed planning?

It is not uncommon for industrial dischargers to be highly critical of such differences if they are the party bearing the stricter standard. Such stakeholders have to pay more to compete in such a location. For example, the State Legislature requires by statute that Bays and Estuaries policies be adopted by the

SWRCB which they did in 1974. That sets a different standard than the same industry locating and discharging further inland. Most people consider the progress made under the different Bays and Estuaries standards significant and positive. Therefore a careful case by case analysis needs to be made on the basis for the inconsistencies. If there is no rational basis the SWRCB should take the matter up and set standards. That is their job and under such circumstances deference to Regional Boards is misplaced.

5. How is your board able to address within its current funding levels, the state and federal laws you are charged with enforcing?

We need more funds. See our Sediment amendment implementation Plan and the attached letter to Senator Wiggons.

In the absence of such funds we need to set priorities so that we properly address the major sources of pollution in our region first.

6. Regional Board maximum and per diems need to be increased. We already have regional board members who do not join us for dinner because it is too expensive. The Regional Board secretary charges Board members for coffee, cream, and snacks for \$120 a year to serve on the Board. I was reading some reports to the legislature in 1969. One of the reports had SWRCB Board member pay at \$23,000 a year. That was when the \$100 Regional Board per diem was set. There has been no change to the Regional Board per diem since but there has certainly been a change of pay for the SWRCB. The Coastal Commission has a small per diem but allows billing for time spent in studying the packet.

Increasingly, Regional Board members are retired, or rich. During my service on the Board we completely ran out of per diems due to the expense cap one year. I and I am happy to report the vast majority of Regional Board members decided to meet anyway because it seemed wrong to deny the public, environmental groups, and stakeholders the ability to have hearings and permits be issued. At several forums I have attended some Regional Board members have not favored the increase. I just have to note that they were quite wealthy compared to the average citizen and middle class person. This is a problem in getting good board members and representing a diversity of populations, and income groups in California.

I like the idea of 7 board members since I think that is a better size board anyway. I do not think that will help fill the boards as I believe they are not filled for political reasons. It is to the advantage of a Governor to keep positions open so if a major issue comes up they can rapidly affect board decision making. This is a pattern of several Governors now of both parties.

The issue of having more qualifications to have a greater science approach is a very complicated issue that I would like to discuss at the staff level. I want to note that Board members with extensive natural resource policy experience tend to more willingly accept probabilities of causation for the burden of proof which is a lower standard than the scientific method. Of course, both the Clean Water Act and Porter-Cologne Act are premised on the difficulty of ever proving direct cause and effect of individual discharges on beneficial uses. This has given regulatory pause to some of the very scientific method



orientated board members over the years. Former Regional Board member Andrea Tuttle found she was more at home as Director of the Department of Forestry that uses a more traditional scientific burden of proof.

The Governor under the Porter-Cologne Act can appoint in the expertise in Water Quality and other associated position scientists. His not filling those positions with that type of position could be carried over to any new designated position qualifications.

7. The Regional Board is making the transition to the TMDL process more and more as the policy direction to do more watershed planning and federal funding have taken effect. The process is using the traditional Porter-Cologne Act Basin amendment provisions. As a Board member I am encouraging staff to use other Basin Planning statutory provisions at the same time.

Currently, we will not complete our TMDL planning process for almost 15 years. One approach I want to experiment with is using local governmental entities that have broad community support to come up with TMDL action plans that then can be presented to the Regional Board for review and approval. This would be on the Local Coastal Plan model to the State Coastal Commission. This will allow us to speed up the process, get more local buy in, and will use other than agency resources.

At the end of the day, our TMDL work is to set priorities and solve the most acute and far reaching problems while being flexible enough to quickly adopt quick and easy TMDL's.

8. How will the board monitor and enforce TMDL's it has or will adopt? The existence of a completed TMDL and a general acceptance by the regulated community should lower our regulatory burden substantially. We will have to make sure that we maintain an enforcement capability at all times. Will it be enough. No.

9. To what extent are unmet funding requirements impeding the timely development of TMDLs, in particular the Klamath Basin. See the attached letter to Senator Wiggons.

10. Role of Regional Board in Achieving Compliance with TMDL.

The Regional Board should play a coordinating role with other state agencies and local government to insure compliance. We should consider some type of review procedure of a delegated enforcement to local government. For example a TMDL implementation waiver to a county for a county road ordinance would have the Regional Board only needing to enforce if the County was not doing it's job. The provision of start up funds to the counties would greater ease the speed of implementation.

11. What are the major contributing sources to nonpoint source pollution in your region? What recommendation do you have to address nonpoint source pollution?

Legacy and current roads of all types are the primary contributor to sediment in our region. The second is land use activities such as farming and silvicultural activities.

The number one landowner in our region is the six million acres under the supervision of the U.S. Forest Service. By size and impact alone they are the largest contributor to sediment. The Regional Board is approaching this on several fronts. The direction to staff is to have this rise to the top of the priority list. Personal contacts have been made with the SWRCB that in their consideration of a State Wide MOU

with the USFW that they consider regional waivers, to make sure the SWRCB does not completely waive the right to have INSTREAM monitoring, (The vast majority of U.S.F.S. monitoring is upslope compliance with BMPs based upon extrapolated models and usually does not involve trend or instream compliance monitoring.), the Regional Board right to regulate in watersheds suffering cumulative impacts, a legacy road program, and the option of Waste Discharge Requirements. Most of these provisions were put into the RB logging waivers and we want to maintain that independent regulatory granted to the State of California over federal activities under the Federal Clean Water Act.

Greater attention needs to be spent in coordinating with the SWRCB on their proposed consideration of sediment from Cal Trans repairs, slide work, and where appropriate on highway location.

We need to develop a legacy roads inventory system with Timber Owners and Ranchers and a long range plan. Small rural subdivisions constitute a significant problem and we are still working on the best way to achieve effective regulation. My guess is we will work with the Counties to improve their rural roads and grading ordinances. There also exists an enforcement gap that will have to be worked out with the counties. The Regional Board is addressing these issues in the proposed sediment ordinance.

12. What factors should be considered in the prioritization of projects for improving sediment-impaired watersheds in your region.

An expedited permit process for restoration is needed. Currently the SWRCB has an expedited 401 certification process for restoration projects but it is tied to CEQA categorical exemptions. These categorical exemptions are extremely narrow. The RB1 has placed on the Basin Plan priority list procedures for environmental restoration projects. Such a provision is also necessary for dam removal projects.

The primary priority problem for the RB1 Board is that so many watersheds have been listed as impaired we are in a triage situation. Currently, our two priorities are the Klamath Basin and Elk and Freshwater. The Klamath Basin was once one of the great fishery rivers of the United States. There is a tremendous diminishment of beneficial fishery uses. The Klamath Basin stakeholders are coming together and now is the time to move forward on solutions even though only a portion of the Basin is sediment impaired. Elk and Freshwater require attention because they are a long term problem that needs to be resolved, the Humboldt County roads and bridges are imperiled, and there are significant downriver problem impacts. Our innovative watershed wide permits need to more comprehensively address sediment problems.

Criteria should be the size of impact, the opportunity for change, the presence of anadromous fisheries, endangered species, quick implementation, and funding.

13. What tools can your board use to most effectively address the sedimentation problems facing the region?

We are currently considering a Sediment Basin Plan amendment. There are pros and cons of such an across the Board regulatory approach. A key concern is without education and follow up regulation there will not be much effect. The desired follow up will be General Waste Discharge Requirements and detailed waivers.



The Regional Board is also developing Regional Board Best Management Practices to be incorporated into sediment waivers. Actual waste discharge requirements cannot specify the manner of compliance but waivers can as compliance is voluntary in that dischargers are free to apply for a waste discharge permit at any time they are dissatisfied with the waiver system. I predict in the next five years this will be one of our most effective enforcement tools. Our priority here will be the biggest problems for the least amount of staff time. For example over 50% of the forest lands and cutting in on U.S. Forest Service Lands. That is a priority. Private road systems regulated by the counties is extremely important. By working with the counties on a grading ordinance and enforcement there can be a considerable reduction in sediment inputs.

14. What is the extent of blue green algae blooms in the North Coast region?

Blue green algae of different types occur throughout the North Coast Region. Concentrations of Blue Green Algae are relatively rare. Blue Green Algae is concentrated in the Pacific Corps Reservoirs. There have also been algae outbreaks in the Eel river though of a different kind of toxic algae. The problem can be expected to grow worse with a warming of the climate. A sound regulatory approach therefore needs to target enforcement and regulatory actions to the areas of concentration. This is also important as there is a sense that some SWRCB staff may be concerned with setting a precedent for other water storage facilities in California if they establish standards for the Pacific Corps. The answer is a careful review of concentrations will limit the effect of the policy. Secondly, if high concentrations should develop elsewhere that cause public health concerns they should be regulated as well.

15. The Basin Plan bans toxics in toxic concentrations. This is a regulatory trigger in that the Regional Board has the responsibility to enforce the Basin Plan standards. The Regional Board has adopted a policy statement that references in the World Health Organization advisory standards with the conclusion that Blue Green Algae levels in excess of the standards violates the Basin Plan. In the abstract this would require regulation of the Pacific Corps dams.

The SWRCB has regulatory control over 401 certifications and has taken over regulation of the Pacific Corps dams. The SWRCB is bound however by the Regional Board Basin Plan standards. Whether this includes accepting the Regional Board policy statement regarding interpretation of the Basin Plan toxic standards is an open question. There has been consideration of a specific Regional Board amendment to the Basin Plan that sets a numerical standard. Such a process is estimated to take at least two years and therefore has not been pursued.

16. What enforcement options do you believe provide the most effective tools for violation of Board orders? The legislative Study Panel Report used to write the Porter-Cologne Act clearly described why prevention is less costly and more effective in the long run. The first step is making sure we are regulating as required by the Porter-Cologne Act so that there are board orders subject to violation. The most effective tools are those that can be enforced quickly to stop the discharge. 13267 reports of

discharge, Cease and Desist Orders and Administrative Civil Liability fines are desirable because of the speed in which they can be adopted.

17. What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate? The Regional Water Quality Control Board is a state regulatory agency. An essential component of regulation is enforcement with fines and penalties when there is not compliance. Fines should be of sufficient magnitude that compliance is cheaper and made the desirable option.

Fines and penalties may not be appropriate for minor violations when there is a new program and where stakeholder outreach to explain compliance has just begun.

Currently the minimum mandatory penalty provisions are causing some hardship in the smaller rural dischargers as there is the same fine whether you are the County and City of San Francisco if you are a tiny community. It is my understanding that the California legislation was modeled on a similar statute in New Jersey. They found as California has found that initially the fine structure had beneficial effects. Over time the permits for smaller entities in New Jersey were rewritten so that they could comply with the Statute. In California many of the smaller communities copy NPDES permits for the larger dischargers. This has resulted in very technical violations over the qualifications of the operator and the frequency of the monitoring. Encouraging Regional Board staff and dischargers to bear the up front expense to hire a professional to help with the permit process should result in permits that allow compliance and do not compromise water quality. Of course all such permits must comply with Clean Water Act anti-backsliding provisions. More discretion to the Regional Board for small rural population designations should be considered by the legislature.



# California Regional Water Quality Control Board North Coast Region

John W. Corbett, Chairman



Linda S. Adams  
Secretary for  
Environmental Protection

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Arnold  
Schwarzenegger  
Governor

August 31, 2007

Patricia Wiggins  
Senator, 2<sup>nd</sup> District  
Capital Office  
State Capital Room 4081  
Sacramento, CA 95814

Subject: Klamath River Basin TMDL Program

Dear Senator Wiggins:

I want to thank you for your August 15, 2007 letter expressing your strong interest in Klamath River basin water quality and the status of the Total Maximum Daily Loads (TMDLs) being developed by the North Coast Regional Water Quality Control Board (Regional Water Board) to address impairments that have been identified within the basin. The Regional Water Board is working hard to ensure that the TMDLs will improve water quality in the Klamath River basin and lead to restoration of all of the beneficial uses of the basin, including commercial fishing. Development and implementation of the Klamath River basin TMDLs remains one of the top priorities for our Board.

However, at the present level of funding for the TMDL program, we will not be able to complete development of TMDL action plans for the entire basin. Furthermore, and more significantly, we will not be able to implement these action plans in more than a few targeted sub-basins. To complete all consent decree action plans for the Klamath Basin will require an additional one-time commitment of 1.5 person-years (PYs). To implement action plans for the entire Klamath Basin will require an initial yearly commitment of about 12 PYs beyond currently available resources.

## Status of Klamath River Basin TMDLs

Since March 1997 TMDL development in the North Coast region has been dictated by the terms of a consent decree entered into by the U.S. Environmental Protection Agency (*Pacific Coast Federation of Fishermen's Associations, et. al. v. EPA*), which established the date by which TMDLs for 17 North Coast waterbodies must be completed. Klamath Basin TMDLs were included in the consent decree, including those for the Trinity River and South Fork Trinity River (sediment), Upper Lost River (nutrients and temperature), Lower Lost River (nutrients and temperature), Salmon River (nutrients and temperature), Scott River (sediment and temperature), Shasta River (temperature and dissolved oxygen, and Klamath River (nutrients and temperature). The status of these Klamath Basin TMDLs is summarized in Table 1.

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The Trinity River and South Fork Trinity River Sediment TMDLs were established by U.S. EPA, and do not currently have corresponding implementation plans. In accordance with Regional Water Board Resolution R1-2004-0087 (adopted in November 2004), Regional Water Board staff are in the process of developing a workplan to set watershed priorities for addressing sediment discharges. The Resolution is a regional sediment TMDL implementation plan, and includes addressing sediment controls in the Trinity and South Fork Trinity Rivers.

Table 1  
Status of TMDLs in the Klamath River Basin, including the Trinity and South Fork Trinity River Drainages.

Subwatershed	TMDL(s)	Year
South Fork Trinity River	Sediment	Final Technical TMDL, 1998
Trinity River	Sediment	Final Technical TMDL, 2001
Salmon River HU	Water temperature	Final Technical TMDL and Implementation Plan, 2005
	Nutrients	Delisted, 2006
Upper Lost River	Water temperature, nutrients	Delisted 2006
Scott River HU	Water temperature, sediment	Final Technical TMDL and Implementation Plan, 2006
Shasta River HU <sup>1</sup>	Water temperature, dissolved oxygen	Final Technical TMDL and Implementation Plan, 2007
Lower Lost River	Nutrients	Technical TMDL in progress
	Temperature	Delisted 2006
Klamath River	Nutrients, temperature, dissolved oxygen	TMDL in progress. Completion expected 2009.

<sup>1</sup> HU stands for Hydrologic Unit and is the terminology used in the CalWater watershed delineation system to identify a sub unit of a watershed.

The Salmon River was de-listed for nutrients in 2006; staff determined that nutrients were not causing impairment of the river. A temperature TMDL for the Salmon River was adopted by the Regional Water Board in June 2005. Timber Harvest Division staff are drafting a Memorandum of Understanding with the U.S. Forest Service to address temperature controls on Forest Service lands, which constitute about 99% of the lands within the watershed. The Timber Harvest Division will provide both staff and funding to implement this TMDL.

The Scott River temperature and sediment TMDLs and associated Action Plan were approved by U.S. EPA in September 2006. Staff from the TMDL, Nonpoint Source, Northern Timber Harvest, and Core Regulatory Units are currently working on implementing the Scott River TMDL Action Plan.

The Shasta River temperature and dissolved oxygen TMDLs and associated Action Plan were approved by U.S. EPA in January 2007. Staff from the TMDL, Nonpoint Source, Northern Timber Harvest, and Core Regulatory Units are currently working on implementing the Shasta River TMDL Action Plan.

U.S. EPA is in the process of completing the Lower Lost River nutrient TMDL in California. The consent decree requires the Lower Lost River and Klamath River TMDLs to be completed by December 31, 2007; however U.S. EPA is currently in negotiation with the plaintiffs to extend



the deadline for these TMDLs. The Regional Water Board does not currently have the resources to develop an action plan for the Lower Lost River TMDL, and given current funding levels we do not anticipate initiating this effort for several years.

In addition to the TMDLs summarized above, Regional Water Board staff have initiated development of the Klamath River dissolved oxygen, nutrient, and temperature TMDLs, including development of an action plan. The Klamath River is the largest river basin and the most complex group of TMDLs to be undertaken by the Regional Water Board. The schedule for completing the Klamath River TMDLs is dependent on the overall consent decree schedule, which is currently being negotiated between U.S. EPA and the plaintiffs. These TMDLs will be completed according to the modified schedule, and as such it is expected that the Regional Water Board will consider the Klamath River TMDLs and Action Plan for adoption into our Basin Plan by August 2009.

#### Current Klamath River Basin Resources

During the current fiscal year, 1.3 person-years (PYs) are allocated to implementing the Scott River and Shasta River TMDL Action Plans, with funding from the TMDL Program. We are planning similar staff allocations next fiscal year.

During the current fiscal year a total of 4.4 PYs are devoted to developing the Klamath River TMDLs and Action Plan. In addition, \$150,000 of federal in-kind funds are being allocated this fiscal year to U.S. EPA's contractor, TetraTech, for technical support in developing the Klamath River TMDLs. We plan to allocate approximately 2 PYs and \$50,000 of federal in-kind contract funds to the Klamath River TMDLs next fiscal year.

#### Needed Klamath River Basin Resources

With the current and anticipated future funding levels, Regional Water Board staff will be able to complete the development of the Klamath River TMDLs and Action Plan, and maintain the current level of staffing of TMDL implementation efforts in the Salmon, Scott, and Shasta Rivers. However, with the current and anticipated future funding levels, Regional Water Board staff will be unable to develop action plans for the Trinity River, South Fork Trinity River, and Lower Lost Rivers for at least several years. An estimated 1.5 PYs are needed to complete development of all consent decree action plans for the entire basin (i.e. 0.5 PY for the Trinity and South Fork Trinity Rivers, plus 1 PY for the Lower Lost River). (Additional resources would be required to complete TMDLs and Action Plans for non-consent-decree listings in the Klamath, specifically the South Fork Trinity River temperature and Lower Klamath River sediment listings.)

Further, at the current and anticipated future funding levels, only minimal staff resources will be available for implementation of the Klamath Basin TMDLs. Available and needed resources to implement the Klamath Basin TMDLs are detailed in Table 2. A total of an additional 11.6 PYs per year are needed to implement the Klamath River basin TMDLs. Staff anticipates that if this level of staffing were available for approximately two years, then in the third year the PY allocation could be reduced by about one-third, and in the fourth or fifth year reduced another one-third.

Table 2  
Summary of PYs Needed to Implement TMDL Action Plans in the Klamath Basin

River Basin	Available PYs	Needed PYs
South Fork Trinity River	0.0	1.0
Trinity River	0.0	1.0
Salmon River	0.1	0.1
Scott River	0.8	2.5
Shasta River	0.5	3.4
Lower Lost River	0.0	2.0
Klamath River	0.0	3.0
Totals	1.4	13.0
Shortfall	11.6	

This summary addresses only the Klamath Basin. As you are aware, there are numerous other Section 303(d) listings for which either TMDLs or Action Plans have not been developed and for which implementation has not begun, most of which are impaired for factors that affect aquatic resources, fisheries, and salmonid populations. Progress on implementation for the sediment-impaired waterbodies in the region, and on development of TMDLs and action plans for the Russian River watershed, Humboldt Bay dioxins, and temperature in numerous other watersheds are examples of TMDL activities lagging or unable to begin because of lack of resources.

The lack of resources for TMDL development and implementation is not unique to the Klamath River basin or the North Coast Region. All regional boards, and in fact the entire nation, is facing the dilemma of having insufficient resources to implement TMDLs. This issue is, however, more pronounced in watersheds that are dominated by nonpoint sources of pollution, which currently receive only limited funds through fees.

I trust this information is useful to you and the Joint Legislative Committee on Fisheries and Aquaculture. Should you have additional questions, or seek clarifications, please do not hesitate to contact Matt St. John at (707) 570-3762.

Sincerely,

John W. Corbett  
Chair, North Coast Regional Water Quality Control Board

Cc: Regional Water Board Members

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**California Environmental Protection Agency**

*Recycled Paper*



December 21, 2007

Geoffrey M. Hales

Dear Mr. Hales:

The Senate Rules Committee will conduct a confirmation hearing on your appointment to the North Coast Regional Water Quality Control on February 13, 2008. We have prepared the following questions to which we would appreciate your written responses.

When we receive your responses, we will determine whether you need to appear in person before the Rules Committee or whether your confirmation will be taken up without requiring your appearance.

Please provide your responses by January 11, 2008. We would also like to receive an updated Form 700, Statement of Economic Interest, by January 11<sup>th</sup>.

### Statement of Goals

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the North Coast Regional Water Quality Control Board? How will you measure your success?*

My goals include the following:

- (1) To represent and act on behalf of all the people in my region.
- (2) To make fair and balanced decisions based on science and evidence. My academic and professional background is in geology and hydrology, and I usually have a strong technical understanding of the issues presented to the Board which helps guide me in my decision making.
- (3) To be involved with Regional Water Board staff where my expertise can contribute, such as technical planning or policy development. For example, since May, I have participated as a subcommittee member with Chairman Corbett and Vice-Chair Anderson to work with Regional Water Board staff in developing the Basin Plan Sediment Amendment, and have more recently become engaged in the Sediment Work Plan as it has become available for review.
- (4) To increased my awareness of regional (and state) threats to water quality and to help identify solutions.
- (5) To recognize conflicts of interest and act accordingly.

Senate Rules Committee

JAN 11 2008

Appointments



I will measure my success by my interactions with, and feedback I receive, from my fellow Board members, from Regional Water Board staff, and from the public or other entity that comes before the Board.

2. *What do you believe are the most serious problems facing your regional board? What actions is your board taking to address these issues?*

I believe one of the most serious problems facing our Regional Board is having Staff located in Santa Rosa given our Region's geographic vastness and geomorphic diversity. Some of the related complaints I have heard from Regional Water Board staff include enforcement ineffectiveness and poor representation. Our Board and Staff have recently discussed the feasibility and challenges of establishing branch offices in Eureka and Yreka, and this issue is still being explored. As Chairman Corbett summarized in his most recent Chairman's Report, branch offices (with other agencies) have proven to improve environmental protection and stakeholder services, which I believe is essential for Region 1.

Other serious problems facing our Regional Board include insufficient funding, work backlog, and litigation.

### **State and Regional Board Roles**

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, particularly considering these are part-time positions.

3. *Do you receive adequate support from the state board and regional board staff to assist you in better understanding some of the complex issues before you? If not, where do you seek help when you need it?*

Yes, Regional Board Staff have been very helpful, and are always willing and enthusiastic to have discussions to help improve my understanding certain issues. I personally do my best to review and understand the issues being brought before the Board in advance of the Board meetings, and frequently engage Regional Water Board staff in technical discussions to improve my understanding of technical or policy details. In addition to discussions with Staff, I frequently consult the Basin Plan to frame the context (and relevance) of my questions.

The Porter-Cologne Water Quality Control Act generally establishes the relationship between the state and regional boards. Regional boards usually set water quality goals in their basin plans, develop Total Maximum Daily Loads (TMDLs), and enforce permit and discharge requirements as well as state and federal water quality laws. However, regional boards' budgets are not reviewed individually by the governor or the

Legislature, and most regional board staffing decisions are made at the regional level, not at the state level.

The state and regional board structure has been criticized by both industry and environmental groups for being cumbersome and lacking accountability, efficiency, and transparency. Both sides note that major policy issues often are decided through the state board appeals process instead of through a consistent statewide policy that is proactively established by the state board and implemented by the regional boards.

4. *What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?*

My position on the Board has only been since February, and in this time I have not developed a comprehensive insight in the State Board – Regional Board relationship. I do understand that if any entity does not receive what they feel to be a favorable decision from the Regional Board, they have the opportunity to appeal to the State Board (as what happened following our Board's decision to not issue PacifiCorp a WDR for Iron Gate and Copco Dams as petitioned by the Karuk Tribe of California et al., resulting in the petitioners appeals to the State Board).

Conceptually, a consistent statewide policy established by the State Board and implemented by the regional boards could work if it reduces the number of State Board appeals. Rather than entities appealing when they are unsatisfied with the Regional Board's ruling, stricter measures could be enacted to limit the circumstances governing when appeals can be filed. A tradeoff with this path, however, may be increased criticism by restricting access to the State Board.

Coordination and accountability between the State and Regional Board could be improved with additional engagement and participation from the State Board (via its Liaison or otherwise) to improve understanding of region-specific needs and challenges.

5. *How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing?*

The North Coast Board is challenged to enforce state and federal laws within its current funding levels. Enforcement requires monitoring, which can be comprehensive (what's being monitored?), time-intensive (monitoring frequency), and expensive (data collection, analysis, and summary). These issues aren't unique to the North Coast board, but the types of water quality impairments and therefore the nature of the monitoring presents its own inherent challenges and costs. This, coupled with the size, diversity, and remoteness of the North Coast region, creates added enforcement challenges and increased travel costs.

## **Regional Board Governance**

Each regional board is made up of nine members, but most of these boards have vacant seats. Currently, the North Coast board has three vacancies. At the December 6, 2007, board meeting, only the minimum number of members required for a quorum were present.

6. *Are there reforms to the structure of state and regional boards that you would recommend to increase their effectiveness?*

In the context of the above statement, our Board has struggled to fill all nine positions and recently has been reduced from seven to six. It is my understanding that over the past couple of years, capable and qualified Board members have been appointed but then not confirmed for eligibility reasons, particularly for the Federal Clean Water Act NPDES ten percent income disqualification rule. I would surmise that if this rule were not in effect, the likelihood of the Board filling (and retaining) all nine positions would increase.

Easing the eligibility requirements, however, could be considered somewhat contradictory to increasing effectiveness. For example, a board of nine may require proportionally more time in their deliberation compared to a board with less members, however the tradeoff is a broader spectrum of representation and expertise, which I believe is more important at making a board more effective.

## **TMDLs**

A number of regional water quality control boards are behind schedule in developing and implementing TMDLs, which are required under the federal Clean Water Act to improve water quality by limiting the amount of pollutants in water bodies.

7. *Please describe the status of your board's TMDL process.*

TMDLs that are currently being developed (i.e., are in preparation), including Technical TMDLs and/or Implementation Plans:

- *Elk River*
- *Freshwater Creek*
- *Klamath River*
- *Laguna de Santa Rosa*
- *Russian River*

TMDLs that are being implemented (i.e., completed Technical TMDLs and Implementation Plans):

- *Garcia River*



- *Salmon River*
- *Scott River*
- *Shasta River*

In addition, monitoring Plans are critical to a TMDLs success, and current funding levels are insufficient to develop and implement comprehensive monitoring plans. This should be examined further to ensure the success of any TMDL implementation (also see response to next question).

8. *How will the board monitor and enforce TMDLs it has or will adopt?*

TMDL implementation plans prescribe compliance monitoring by landowners, but enforcement is the responsibility of the Regional Board. Limited funding and staffing will restrict the ability to monitor. Monitoring is a necessary component of any TMDL to ensure TMDL targets are met, and without the ability to fully implement monitoring plans by collecting the required data and summarizing results will reduce the effectiveness of the TMDL at improving water quality.

9. *To what extent are unmet funding requirements impeding the timely development of TMDLs, in particular the Klamath Basin? What changes could the regional board effect to speed up the development of these TMDLs?*

The Klamath River is the largest and probably the most rural watershed in our region. Pollution sources include forestry, irrigated agriculture, hydroelectric facilities, grazing, roads, industrial discharges, and urban discharges (e.g., runoff and wastewater). TMDL development in the Klamath River Basin has been dictated by 1997 consent decree; however, TMDL program funding is impeding timely development.

Current funding levels for the TMDL program are restricting TMDL development for the mainstem Klamath River and are preventing TMDL action plans (or work plans for Trinity River TMDLs developed by EPA) from being implemented in several Klamath River sub-basins, including:

- Mainstem Trinity River: Final Technical TMDL completed 2001 (by EPA), Regional Board workplan for listing watershed priorities in progress.
- South Fork Trinity River: Final Technical TMDL completed 1998 (by EPA), Regional Board workplan for listing watershed priorities in progress.
- Salmon River: Final Technical TMDL and Implementation Plan completed 2005.
- Scott River: Final Technical TMDL and Implementation Plan completed 2006.
- Shasta River: Final Technical TMDL and Implementation Plan completed 2007.
- Lower Lost River: Technical TMDL in progress.



A mainstem Klamath River TMDL is also under development with completion expected for 2009.

To complete all consent decree TMDL action plans for the Klamath Basin will require additional staffing (additional one-time commitment of 1.5 person-years). Additional staffing is also required to implement the action plans for the entire Klamath Basin is required (an initial yearly commitment of approximately 12 person-years). These staffing needs are beyond currently available resources.

At current and anticipated future funding levels (and corresponding staff allocation), Regional Water Board staff *will* be able to complete the development of Klamath River TMDLs, and provide limited implementation efforts for the Salmon River, Scott River, and Shasta River, but *will not* be able to develop timely action plans for the remaining sub-watersheds (i.e., for at least several years) or be able to actually implement the Klamath Basin TMDLs.

10. *What role could the state and regional boards play to ensure and facilitate compliance with TMDLs once they have been developed? For example, should the state provide financial assistance to help local governments comply with TMDLs requirements?*

The more incentives or assistance local governments or other local entities (e.g., RCDs) are provided, the better the chances for compliance. Financial assistance not only provides the means to do the work, but it demonstrates the funding source's (state or otherwise) commitment to TMDL implementation and compliance. This can be extremely beneficial to economically-challenged areas such as Siskiyou County and would greatly improve the success of the Scott River and Shasta River TMDLs.

### **Nonpoint Source Pollution**

Nonpoint source pollution, or polluted runoff, is created when water picks up contaminants from pesticide use, mining, logging, and a multitude of other sources, and deposits them in water bodies. According to the State Water Resources Control Board, nonpoint source pollution is a major cause of degradation of the state's waters.

11. *What are the major contributing sources to nonpoint source pollution in your region? What recommendations do you have to address nonpoint source pollution?*

In my opinion, the primary contributing source to nonpoint pollution in our region is sediment delivery from roads and road-related mechanisms (e.g., culvert failures, road-related landsliding). These can be attributed in large part to the number of unimproved roads on federal, state, and privately-owned forestlands.

Mechanisms are currently in place (and new ones are being developed) to address excess sediment delivery, but probably the biggest challenge will be in monitoring and enforcement in extremely rural areas, which make up a significant portion of our region.

Other significant nonpoint source pollution in our region includes nutrients and elevated water temperature. Nutrient loading to waterbodies can be attributed chiefly to agricultural runoff, and temperature increases can be attributed to riparian shade removal, dam and diversion returns, or from channel modification such as increased channel roughness (slowing water velocities) or streambed aggradation. The primary mechanism to treat these non-point source pollution problems is for landowners to implement best management practices (BMPs). Although BMP implementation is the landowner's responsibility, equal responsibility lies within federal and state agencies, including our Board, to enforce regulations but also to educate landowners and stakeholders via education and outreach.

### **Sediment-Impaired Watersheds**

Sediment-impaired waters is a prevalent issue in your region, caused by a variety of sources including roads, timber harvesting, and agriculture. At the December 6, 2007, board hearing, during your staff's presentation of the public review draft of the Work Plan to Control Excess Sediment in Sediment-Impaired Watersheds, staff noted that there are 27 sediment-impaired watersheds in the North Coast region. Staff described the work plan as a "wish list," prioritizing projects by watersheds, regional tasks, and tasks within each watershed.

#### *12. What factors should be considered in the prioritization of projects for improving sediment-impaired watersheds in your region?*

First, the Work Plan to Control Excess Sediment in Sediment-Impaired Watersheds (Work Plan) needs more review and comment. The draft Work Plan was released November 14, 2007, which left little time for review before the December 7 meeting. Following my initial review, I had several questions that I presented to Ms. Fitzgerald (primary author) that require additional follow-up. Because of the limited review time, the proposed draft resolution to accept the Work Plan (Resolution R1-2007-0095) was postponed. The current schedule calls for a workshop at the January 17, 2008 meeting, followed by a public comment period, and then our Board will reconsider the draft resolution at the March 6, 2008 meeting.

As for factors to consider in prioritizing projects, the draft Work Plan identifies 27 water bodies as not currently meeting sediment-related water quality standards. Given the Work Plan's objective of improving water quality and threats to beneficial uses, the highest priority should be placed on projects affecting public health and safety, affecting aquatic and terrestrial species habitats, and those that affect the greatest number of beneficial uses.

The draft Work Plan identifies the need to add 19 additional staff to fully execute the proposed plan. The North Coast board does not currently have the staff nor the funding to execute the plan as proposed (hence the "wish list" description). However, I believe

further review may identify optimization opportunities to help streamline tasks, and reduce staff and budget needs, which will refine evaluating project priorities. There is no question of project need, but further evaluation and review should be able to streamline tasks, reduce costs, and maximize efficiency.

*13. What tools can your board use to most effectively address the sedimentation problems facing the region?*

Three primary tools can be used to most effectively address our regional sedimentation problems: TMDLs, the Work Plan to Control Excess Sediment, and the Basin Plan Sediment Amendment. Each are described briefly below:

- TMDLs: For water bodies that have sediment TMDLs, numeric criteria and monitoring plans are established to reach TMDL targets. Effectiveness can be increased by completing outstanding Technical TMDLs and implementation plans, and by monitoring.
- Work Plan to Control Excess Sediment: The Work Plan is being developed in response to the TMDL Implementation Policy Statement for Sediment Impaired Receiving Waters in the North Coast Region (Resolution R1-2004-0087). The Work Plan sets priorities for addressing excess sediment at a watershed-specific level, and describes how and when available authorities and permitting enforcement tool will be used (the status of the Work Plan is discussed in Question #12).
- Basin Plan Sediment Amendment: The Basin Plan Sediment Amendment (titled "Measures to Control Excess Sediment") establishes a permitting program that will be effective in controlling the discharge of excess sediment into the waters of the state in the North Coast Region by adopting a prohibition to the Basin Plan and developing an Implementation Plan for both landowners and Regional Board staff. Regional Water Board staff are conducting outreach efforts with federal, state, and local landowners to explain the Amendment, and are receiving constructive comments to help strengthen draft amendment language.

Additional (more general) tools include continuing outreach and education efforts with landowners and land managers; improving interagency communication and collaboration at federal, state, and local levels; improving monitoring programs; and, continuing enforcement.

## **Blue Green Algae**

For several years blue green algae blooms have been found in the Klamath River, Big Lagoon, and the Eel River. According to the Department of Health Care Services, the algae and the toxins it produces can cause skin rashes, skin and eye irritation, allergic reactions, gastrointestinal upset, and at high levels of exposure, serious illness or death.



During this past summer and fall, health warnings were posted in your region because of high levels of toxic algae in the Klamath River.

*14. What is the extent of blue green algae blooms in the North Coast region?*

In the North Coast region, documented Blue Green Algae (BGA) blooms have occurred in the South Fork Eel River, the Klamath River and its reservoirs (Copco and Iron Gate reservoirs), and in Big Lagoon. Although these are the known locations where BGA blooms have been documented, it is possible that blooms have occurred in other water bodies that have met the water quality conditions conducive to BGA.

*15. What level of science on blue green algae do you believe should trigger regulatory action by your board? Do you believe the board should address the issue of blue green algae blooms? If so, how?*

BGA is a matter of public health and safety, and I firmly believe it is the responsibility of our Board to address the issue of BGA blooms. Since my appointment last February, I have heard repeated testimony on both sides of the BGA argument; both sides agree that the species of BGA which have the ability to produce toxins (e.g., microcystin and anatoxin-a) are present in some North Coast waters, but the debate is centered on whether an actual human health risk exists and if actions that should be taken.

A BGA voluntary guidance document was prepared by the SWRCB in June 2007 (Cyanobacteria in California Recreational Water Bodies). In my opinion, this report represents a very appropriate level of science to trigger regulatory action, as presented in the guidelines for posting to warn of exposure risks. Although health impairments from exposure to BGA in recreational waters cannot be precisely defined or predicted (SWRCB, 2007), I believe the World Health Organization published numeric thresholds provide the best available science at this time and should be used to trigger regulatory action by my Board as presented in the SWRCB report. In light of the potential health risks (albeit still with uncertainties in actual health impairments from exposure), I support my Board's action to post exposure warnings as outlined in the SWRCB report.

### **Enforcement of Water Quality Laws**

The office of the secretary of the California Environmental Protection Agency reported to the Legislature on environmental enforcement and suggested that the state and regional water quality control boards were among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never sought criminal penalties for serious violations, and generally did not aggressively pursue violators.

*16. What enforcement options do you believe provide the most effective tools for violation of board orders?*



The Board has a variety of enforcement options it can exercise, including:

- Investigation Orders
- Cleanup and Abatement Orders
- Cease and Desist Orders
- Notices of Violation
- Administrative Civil Liabilities
- Mandatory Minimum Penalties
- Pursuing civil or criminal charges

Of these, the most effective tools are probably: (1) issuing Notices of Violation, (2) assessing Administrative Civil Liability fines, and, (3) pursuing civil or criminal charges.

Our region has an active enforcement unit which was established in response to lack of enforcement criticism.

17. *What role do you believe fines and penalties should play in enforcing the Porter-Cologne Water Quality Control Act? When are fines and penalties not appropriate?*

Most agencies do not assess Administrative Civil Liabilities for violations, and I believe the success in the Regional Board's enforcement (and possibly in compliance) lies in our ability to assess these fines. Assessing fines also sets (and maintains) the precedent that water quality laws are enforced and violations are punishable by fines and penalties.

Fines and penalties may not be appropriate under certain circumstances, which is for the Board to decide (whether by Staff recommendation or by Board decision). Options for Compliance Projects or similar constructive mitigation continue to be successful and are provide environmentally proactive solutions for the discharger.

Geoffrey M. Hales  
December 21, 2007  
Page 11

Please send your written responses to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Thank you for your help.

Sincerely,

DON PERATA

DP:JR

cc: Water Quality Control Board, North Coast Region



W. R. Massey

January 11, 2008

Senator Don Perata  
Senate Rules Committee  
Room 420, State Capital  
Sacramento, CA 95814-4900

ATT: Ms. Nettie Sabelhaus

Dear Ms. Sabelhaus:

Below are my responses to the questions posed in Senator Perata's letter of December 21, 2007. I am happy to share my views on the work that we do at the North Coast Regional Water Quality Control Board. As a prologue, I would like to say that I have been involved in regulating the beneficial uses of water in the State of California through my position on the North Coast Board. But I have also taken a broader view that it is our job to help the regulated community find ways to improve the beneficial uses of water. As an example, I am part of the group formed recently to look at ways to improve sustainability of water resources in California with an emphasis on the impact of Climate Change. This group includes representatives from federal EPA, CALEPA, DWR, three of the nine regional boards, and several environmental groups. I also believe that working in an area of personal experience is important. Coming from western Sonoma County, I am trying to help small districts in this area improve on controlling discharges to the Russian River. On January 7, 2008 I helped put together a workshop held at the Board's facilities to see if there might not be a way to help several districts and the greater community through some sort of regionalization of sewer facilities. My personal commitment that I bring to the position is an understanding of the need for regulatory actions and beyond that, a positive contribution to attaining solutions. Below is each of your questions with my response.

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as a member of the North Coast Regional Water Quality Control Board? How will you measure your success?

As a continuing member of the NCRWQCB I am concerned with keeping the accomplishments going that we have started. This includes making sure that we wisely use the limited resources we have as the Board. Our primary mission is to uphold the laws of the State of California, and this requires enforcement. But for efficiency, and for fairness to all, enforcement needs to be consistent. Consistent enforcement of our laws leads to consistent expectations among all members of our society. Additionally, while we may be regulators I would hope we can also be a part of the constructive process to help those we regulate develop solutions to water protection.



I believe that there are readily available reporting requirements that will determine whether or not we are meeting our goals. Certainly the fact that we have reduced the backlog of MMPs (Mandatory Minimum Penalties) pending in our region is an example of this measurement.

2. What do you believe are the most serious problems facing your regional board?  
What actions is your board taking to address these issues?

The process of making and implementing decisions is very time consuming for any regional board. As a result, getting all factions involved in a particular decision, and holding everyone's attention frequently leads to duplication of our efforts. Additionally, there are those who understand the process and sometimes attempt to lengthen it for their own benefit. To help this process for some issues, we have recently broken our board into smaller groups with which to hear various issues. This consolidates and speeds up the ability of the board to accommodate the workload that the public has a right hear in a timely fashion.

Region 1 covers over 20,000 square miles, and about 40% of the watershed of the state. The highway system in California has many options for North-South travel, but in the North end of the state East-West travel has limited options. This means that travel from our office in Santa Rosa to Yreka, as an example, is a 7 to 8 hour trip with clear roads. We have a little less than 90 staff members to cover a large region. Recently we have been looking at establishing "mini-satellite" offices, sharing space with other state agencies. It is still too early to tell, but it seems promising as a way to serve the members of our populations living far from our main office.

Finally, there is the question of how we should deal with small rural districts. These entities have very limited resources, sometimes representing populations that are frequently unfamiliar with changing state and federal regulations. Region 1 has, I believe, the largest share of these types of districts in the state. It is a challenge I personally have taken on to co-ordinate the work of our staff, the State Board and their staff. We are seeing greater emphasis on small districts in the planning of regulations and the recognition in state funding processes that small districts cannot compete well with larger entities. There are now funding set asides for small districts and encouragements for greater regionalization through joint efforts by combining several small districts in a single project.

3. Do the state board and your regional board staff assist you to better understand some of the complex issues before you if you request help? If not, where do you seek help when you need it? Do you have any suggestions on how the state water board's staff might better assist you?

I can honestly say that having been on this board for seven years, I have never been denied, put off, nor ignored by anyone on the regional or state board staffs. Anytime I have had a question, staff has made my request their priority. This has been true at both the regional and state boards. I would say that this is one area of the board's workings that is about good as it gets.

4. What is your view of the relationship between the state board and your regional board? Could coordination and accountability be improved? If so, how?

I suspect that most of us who have played any part in this system have spent evenings in discussion about this with our colleagues. Certainly I have had these discussions. As a professor of Political Science for decades, I would suggest that it comes down to whether you favor efficiency of a governmental system, or one that is as open and inclusive as you can reasonably make it. While I would agree that it can be very frustrating as a process, this system seems to lead to decisions that are well heard, fully explored, and as balanced as is possible.

5. How is your board able to address, within its current funding levels, the state and federal laws you are charged with enforcing?

Over the last seven years our region has used an enormous portion of its resources for dealing with timber issues, and the fall out from a single company's HCP. While this is on going in litigation and using legal resources, our staff is now catching up as quickly as possible. I cannot say that I think our funding is adequate for an ever increasing public expectation, though I am fully aware that this is probably a daily lament that the legislative team hears. The scope of work necessary for each of our major divisions has over time gotten much larger and more complex, with resources that have not quite kept a pace. As an example, an NPDES permit from 1990 took less than one half the necessary hours to issue than the current permit. In fairness, much of the new requirements of a permit are the result of better information in the 21<sup>st</sup> century about such things as toxins etc. But the funding resources are still based on the assumptions of a workload of a previous century.

6. Are there reforms to the structure of state and regional boards that you would recommend to increase their effectiveness?

Certainly the structure of the Boards is one which includes the public to a very high degree. Members of the regional boards are volunteers; they are citizens who will at some time return to the other side of the podium. The public is allowed input at all levels of the decision making process. This is time consuming, and cumbersome but I believe it's worth the trouble in an open society.

However, having observed the system for seven years, I believe there are some small changes that could yield substantial benefit. First, reduce the number of Board members from the current 9 to 7 or 5. Other than true tribunals, I cannot think of other bodies that have more than 7 members. Secondly, I have seen several well qualified members of my board disqualified for the rule of 10% of income from an NPDES permit holder. This might possibly be changed to a 10% rule for only the actual permitting board. Finally, I would strongly encourage a review of the categories for seat limitations, and include one if not two who have credentials in the hard sciences or engineering

7. Please describe the status of your board's TMDL process.

In a word, struggling. Most of the TMDLs we have on the North Coast involve non-point pollutants. Therefore, they use a large amount of staff time which is a resource that we simply need more of. We are using the staff time we have as efficiently as we can, but there is not enough to get the job done.



8. How will the Board monitor and enforce TMDLs it has or will adopt?

We will use all the available resources we have to complete and continue monitoring wherever necessary. Often there is monitoring being done on a water body which we can tie into for our TMDL process. But if this coordination does not exist, then it requires more of our resources.

Enforcement is a tool designed to get compliance. Outreach to communities and organizations is our first step which should get us a large amount of compliance. After that we turn to progressively harsher enforcement until we do get compliance. Ultimately we can and have used the Attorney General's office to achieve compliance with state and federal requirements.

9. To what extent are unmet funding requirements impeding the timely development of TMDLs, in particular in the Klamath Basin? What changes could the Regional Board effect to speed up the development of these TMDLs?

These are questions that we have been dealing with for several years. Ultimately it comes down to available resources. In the Klamath basin which is a very complex river system we have taken the approach of dealing first with the tributaries and then with the main stem. The TMDLs for the Shasta River and the Scott River have been completed with implementation plans. We are working now on the main stem of the Klamath River, and anticipate completion in 2009. Recognizing that a complete TMDL must be able to withstand challenges, each of the above completions creates a book of approximately two inches of paper. That represents a large amount of staff time. To implement the TMDL action plans for the whole Klamath system we estimate would require about 13 PY (person years.) Currently we have 1.4PY available, which leaves a short fall of 11.6PY. It would also possible to use contract resources for some of these short falls. I don't believe that there is much that we can do to speed the process since this is dictated by legislation. What will work is more resources.

10. What role could the state and regional boards play to ensure and facilitate compliance with TMDLs once they have been developed? For example, should the state provide financial assistance to help local governments comply with TMDLs' requirements?

I would start with the assumption that no one wants to live with an impaired water body. So if your river is impaired, it is because someone can't or won't help reduce the impairment. Outreach and education is the first line of action. Much of this is going on now, but there could be a little more resource put to this task. To the extent that we have small rural communities and districts which have an insurmountable resource challenge, financial resources from state or federal governments will be the only solution. Beyond that, traditional enforcement is necessary and this too takes resources.

11. What are the major contributing sources to nonpoint source pollution in your region? What recommendations do you have to address nonpoint source pollution?

In the North Coast Region the major sources of nonpoint pollution is sediment, temperature, and nutrients. They come from several sources including unpaved roads, timber harvesting, agricultural practices, and legacy issues with mining. To correct these, it is a matter of using the

tools available to us such as outreach, and then turning to enforcement if necessary. But much of this still comes down to the necessity of resources to fund an ultimate solution.

12. What factors should be considered in the prioritization of projects for improving sediment impaired watersheds in your region?

First, I would support the staff's characterization of the draft work plan to control sedimentation as a 'wish list' since we cannot do all that we want, all at once. It then comes down to which will you do first. Some of this is not within our discretion since we are under a court order to deal with specific water bodies. But where we have a choice, my preference is a) to get the most results for the least resources and b) to go after the "worst first." But these may not always be the same, and therefore it becomes a case by case decision which the Board must make.

13. What tools can your board use to most effectively address the sedimentation problems facing the region?

I believe that we have the necessary tools to enforce compliance of reducing and eliminating sediment impairment of the North Coast Region's waters in the Porter-Cologne Act and the Federal Clean Water Act. Beyond the use of enforcement, we can through outreach show our communities the benefits to them of their participation in correcting the problems. I would prefer to use the 'carrot' first, but have no problem with enforcing the law.

14. What is the extent of blue green algae blooms in the North Coast Region?

At this point we are not sure the extent of blue green algae through out the region. Further, we have limited resources with which to define the extent of the problem. We have however posted warnings on water bodies that we know have a problem, and we have worked with health officials to ensure that no drinking water system has been compromised. To date we know of no drinking water system that has been affected

15. What level of science on blue green algae do you believe should trigger regulatory action by your board? Do you believe the board should address the issue of blue green algae blooms? If so, how?

The beneficial uses of water in the state of California require us to be involved in this issue. This would include the cultural and recreational uses of our waters among those beneficial uses. Additionally, there are health issues associated with blue green algae. The World Health Organization (WHO) has a stricter standard for blue green algae than is generally accepted by many local entities in our state. In my mind this clearly implies that we should be involved in the regulatory process on blue green algae. But there are still some scientific uncertainties which clearly means we need to study the issue more. I can tell you that I was Chair of the Board when we issued the first posting of warnings on Copco and Irongate reservoirs. I agreed with it then, and based on erring on the side of caution, I would do it again.

16. What enforcement options do you believe provide the most effective tools for violation of board orders?



I would classify violators into three categories: the uninformed, the incapable, and the intentional. For the uninformed, outreach and education generally will bring compliance. That is the least expensive and over all most effective for this group. For those incapable of compliance we need to find a way to assist them to compliance. Frequently small rural districts do not have the resources or skills to bring themselves into compliance. Some funding and training will cure this usually. And then, there are those who intentionally ignore the law because they feel they know better or they are benefiting from non compliance. As I have said before, for this group we have a whole host of progressively painful penalties up to and including prosecution by the Attorney Generals office.

17. What role do you believe fines and penalties should play in enforcing the Porter-Cologne Act? When are fines and penalties not appropriate?

I am convinced that human behavior being what it is, that without fines and penalties available we would generally not get compliance with our regulations. Therefore, they play a very vital part of our administering the law. It is clear that the implementation of the MMPs (Minimum Mandatory Penalties) has lowered violations for most permit holders. But small and disadvantaged systems have been unable to comply, and have asked that they be exempted from these fines. If that were to happen, there would never be an incentive for them to comply. Therefore I would agree that the penalty applies, but we will allow a compliance project in lieu of spending the money on a penalty. Essentially then I am saying that for purposes of consistency of regulation that all violations in fact get a penalty. The question that remains is how do you administer the penalty.

I hope that the above responses gives you adequate assurance that I will both uphold the laws of the State of California, protect the beneficial uses of water in the State of California, as well as attempt to provide as much assistance to all members of each community our state Region as I can. If there are any questions you have, or any member of your Committee, please let me know. Thank you in advance for your time.

Sincerely,

William R Massey

January 21, 2008

Ms. Nettie Sabelhaus  
Senate rules Committee Appointments Director  
Room 420, State Capitol  
Sacramento, CA 95814

Dear Ms. Sabelhaus:

Attached you will find the answers to the questions sent to me by Don Perata, Chair of the Senate Rules Committee. He requested that I provide my responses to you by January 25, 2008 along with an updated Form 700 which is also enclosed. Should you have any questions, please feel free to contact me on my cell at (818) 261-6832. Below are the questions.

CSAC provides financial aid to students through a variety of grant and loan programs. The 2007-2008 budget includes \$873 million in General Fund support, almost all of which is used to support anticipated costs of Cal Grant programs, the Assumption Program for Loans in Education, and other financial aid programs.

### Statement Goals

1. *Please provide a brief statement outlining the goals you hope to accomplish while serving on the California Student Aid Commission. How will you measure your success?*

**Response:** The four overarching goals that I hope to accomplish while serving on the California Student Aid Commission include: 1) advocating for state general fund support of Cal Grant entitlement/competitive programs and for specialized programs for teacher/nursing loan assumption, for grants and scholarships for foster youth, law enforcement and federally funded programs. This includes working with the Executive Director and Commission staff on the implementation of a communications and advocacy plan 2) advocating for the continuation of the commission's grant outreach programs, including the adoption of a long term plan for leveraging our resources with other agencies 3) continuing to work on adopting the Bureau of State Audit recommendation that we clearly define the roles and responsibilities in the relationship between CSAC and Ed Fund until ED Fund is sold and 4) continuing to assist in the revision of the Commission's Governance Policies adopted on September 6, 2007.

My success would be measured by the following Key Success Indicators:

- Meetings with new legislators to help educate them about CSAC programs and services

**Senate Rules Committee**

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**Appointments**

- Creation of a communications plan to broadly distribute information about the availability of state financial aid
- Attendance at CSAC events to advocate for our specialized programs and raise public awareness about the need for them
- Meetings with other agencies such as the \$3 million dollar California Community Colleges "I can afford college" advisory committee to discuss leveraging resources and sharing outreach plans
- Including a plan to leverage resources in the CSAC strategic plan
- Attendance at California Community Colleges Financial Aid Administrators regional meetings and state-wide conferences to review, discuss and eliminate redundancies
- A clearly written definition of the roles and responsibilities of CSAC and Ed Fund through my work on the Commission's Governance and Monitoring Committee
- The adoption of an Annual Oversight Plan that includes timelines and the process for reviewing all documents as required by Title 5.

## Outreach

2. *Are you satisfied with the quality of outreach CSAC provides to students and their families regarding the availability of student aid? What CSAC-sponsored outreach activities do you believe are most effective in advising prospective college students about the Cal Grant and other financial aid that is available to low- and moderate- income students? What data do you use to evaluate the quality of outreach?*

**Response:** The quality of outreach that CSAC provides to students and their families regarding the availability of student aid is remarkable, given the amount of staff working in this area. Cash for College Workshops, just one of the many outreach initiatives, is fast becoming an activity attended by more and more parents and students every year. By offering scholarships to needy students, it has become a big draw, and I believe, one of the most effective CSAC sponsored outreach activities. The distinctive black and orange Cash for College banners and materials can be seen at many of my local high school and community college campuses.

As far as the data that I use to evaluate the quality of outreach, at every commission meeting we review the data with CSAC staff in terms of how many students are applying for Cal Grants so that we can make any necessary improvement. Areas that need improvement are discussed and strategies to improve the numbers are also discussed.

3. *Student aid applications can be difficult to understand. are you satisfied with the quality of assistance CSAC provides to students and their families as they attempt to apply for student aid?*



**Response:** Even though staff strives to make the applications easy to understand, I do believe that there is a certain level of literacy required to understand the forms and mistakes are still being made. Therefore, I am not satisfied that we have figured out how to help all of our students and their families. We must find a way to mirror federal financial aid forms that strive for simplicity. I realize that part of the problem is that English Language Learners still struggle with understanding forms written strictly in English. One possible solution could be to print instructions in other languages.

## **Rising Cost of Attending College**

California financial aid policies historically have focused on providing financial assistance to cover student fees. According to a report by the national Center for Public Policy and Higher Education, non-fee costs of attending college are escalating. the report cites that textbook costs for California community college students are roughly equal to what a full-time student pays in annual fees.

*4. Is this commission developing any policies that address the rising costs of attending college in California, especially the growth of non-free-related expenses? What policy changes might CSAC consider in response to this growing need?*

**Response:** As the Community College representative on the Commission, I know all too well how this issue plays out on our campuses. I am somewhat appalled at the large number of students who report to me that they can't afford their textbooks and therefore go to the library to "borrow" textbooks for a few hours. This practice has to stop. One policy change that the state, not just CSAC, might consider is the use of e-textbooks which could be purchase for a fraction of the cost of a regular textbook. E-books on average cost 50% less than textbooks sold in college bookstores. The policy change that CSAC could consider in response to this need is to help students advocate for e-textbooks from textbook publishers to make their courses more affordable.

*5. How does the commission determine the student budget for attending a California college or university? How does this budget keep pace with the growth of college-related expenses, and as books and supplies?*

**Response:** Estimated student budgets which are called "cost of attendance" are established each year by the commission and reviewed by the commissioners. Every three years, Commission staff conducts a survey of students to determine their average expenses. While expenses vary depending on a student's major (e.g., engineering and medical majors require high priced textbooks) and the number of units he or she is taking in a given semester, the estimated cost of attendance reflects "average" expenses. CSAC utilizes estimated cost of attendance budgets to award financial aid funds.

Currently, I do not believe that the cost of attendance is keeping pace in one specific area—books. The cost of textbooks has skyrocketed in recent years. While the state legislature has fought to bring these spiraling costs under control, one area that I would



like to see professors and students explore is e-books that would be delivered electronically (as stated above) at a fraction of the cost to students.

*6. When developing the student budget for determining financial aid, does the commission take into account the different costs of living in various parts of the state? If not, should it and if yes, based on what measures and how is the budget recalibrated?*

**Response:** That is an excellent question because we do not take into account the different costs of living in various parts of the state. For example, we know that housing costs can vary depending on whether you live in Santa Barbara where the average rents are \$1,000 per month or in Merced where the average rents are half the cost of living in Santa Barbara.

The hard part is that housing costs can vary depending on your living arrangements. A student going to Santa Barbara City College could have a huge off-campus housing budget given to him but in reality be living with 3 or 4 other students, while the student in Merced has no such arrangements. In order to begin recalibrating the budget to take into account the different costs of living in various parts of the state, there is an underlying assumption that everyone has the same off-campus living arrangements and that is not always the case.

While it would be wonderful to have an individualized housing budget for every student's situation, it isn't very practical. I also think that the work load on financial aid staff would be a burden as you begin to seek out this information so that you don't assume every student at Santa Barbara City College is paying \$1,000 a month and therefore needs a larger housing budget. This would slow down the delivery of financial aid which is one of the reasons why the federal government also uses an average when determining on and off campus housing budgets.

*7. Students are borrowing more than ever before, and many are turning to private loans with high interest rates or are using credit cards to pay tuition. Does the commission monitor the number of private loans issued to students? As a CSAC commissioner, do you believe there is a role for the commission in addressing the borrowing and debt which many students now assume as a means of completing their postsecondary education? If so, what should it be?*

**Response:** Since my time on the Commission (which has only been eight months), we have not discussed monitoring the number of private loans issued to students. However, it is an issue that I am very interested in exploring. I do know that the student loan industry is still reeling from accusations, investigations and all the media attention being given to it as a result of recent scandals in the loan industry. The good news is that, as a result of all of this media attention, is more students are aware of their student loan options.

In my opinion, all students should have to take a mandatory credit counseling class (it could be online to speed up the process) before they borrow a penny. I don't believe that students truly understand what they are getting into when they turn to private lenders when they are eligible for subsidized loans at lower interest rates.

As a CSAC commissioner I believe that we have a role and responsibility in addressing borrowing and debt management. I use the word debt management to let you know that, students cannot complete a four year education in this state on the amount of grant money they receive. Loans are inevitable however I would like to see students educated about borrowing only what they absolutely need to finish their education.

### **Future of State Financial Aid Programs**

In 2001 the Cal Grant entitlement program went into effect. This program significantly changed the Cal Grant A and B programs by guaranteeing and award to recent high school graduates and community college transfer students if they meet the specified income and academic requirements. This guarantee has been a cornerstone of the state financial aid program.

*8. As a CSAC commissioner, do you have specific policy recommendations for making improvements to the Cal Grant A & B programs that will allow them to more effectively serve California students?*

**Response:** Yes. The commission should consider an appropriate augmentation to the number of Cal Grant A and B competitive awards. Today, we have an efficient Cal Grant Entitlement program that continues to fund more than 60,000 eligible new students each academic year. However, the Competitive Cal Grant program is constrained because the number of the awards has remained at 22,500 since 2001. A typical eligible non-recipient is age 27, earns approximately \$17,000 for a family of 3, and has a G.P.A. of 2.9, but the Commission must apply scoring criteria to reduce the number of eligible students. Furthermore, 47,000 students were not funded a Cal Grant B but had a "zero" EFC (estimated family contribution).

Given the state budget deficit, there is little hope that this situation is going to change in the near future, but we can effectively serve California students by advocating for at least a modest increase in these grants as the cost of completing a postsecondary education continues to rise and changing the number of awards. We should continue to encourage bipartisan support for the funding of growth in the Cal Grant programs.

*9. How does CSAC measure the effectiveness of its financial aid programs? How do you evaluate this effectiveness?*

**Response:** CSAC has moved to strengthen the monitoring of the effectiveness of its financial aid programs with a new Governance Policies and Annual Oversight Plan. This document is a wonderful road map of overall compliance with commission policies and



the monitoring of the effectiveness of our programs. All relevant statistics, trends, and extensive narrative allow us to evaluate the effectiveness of each program.

### **Federal Focus on College Affordability**

This year congress passed and President Bush signed into law a major student aid package, The College Cost Reduction and access Act. The new law makes changes to federal student aid programs by reducing federal subsidies to private lenders by approximately \$20 billion over five years and redirecting all but \$750 million toward student aid.

*10. How has your commission been briefed on this new law? Are there major policy and fiscal implications for California's student aid programs following passage of the new law? If so, what are they?*

**Response:** Yes, the commission has been briefed on this new law. The major implications for our student aid programs include both positive and negative features. On the positive side, it will cut interest rates in half on subsidized student loans over the next five years, make student loan payments more manageable for borrowers by guaranteeing that borrowers will not have to pay more than 15 percent of their discretionary income in loan repayments, increase federal loan limits to provide borrowers with additional assistance in paying for college and help them rely less on costlier private loans. However, more importantly it would increase the maximum Pell grant by at least \$500 over the next five years.

While all of these positive features should be applauded, one of the negatives is that the College Cost Reduction Act significantly reduces lender subsidies in order to pay for reductions in Stafford Loan interest rates, increases in Pell Grants, and the new loan forgiveness program for public service employees, (e.g., nurses, law enforcement officers, teachers, etc.) among others. From the guarantor perspective, the new law reduces guarantor payments by at least \$2.5 billion over five years. Specifically it would reduce collection retention for Ed Fund from the current 23 percent to 16 percent. This makes Ed Fund less appealing to a potential buyer.

### **Assumption Program of Loans for Education**

The Assumption Program of Loans for Education (APLE) program is designed to increase the number of qualified teachers in disadvantaged schools and in high-priority subject areas by paying off or forgiving student loans, up to specified amounts. Each year CSAC allocates authorized APLE slots among qualified teacher education institutions in proportion to their production of teachers. If the institution is unable to use its allocated awards, CSAC redirects the unused awards to other institutions. The Legislative Analyst's Office reports that even with his redirection, a portion of the APLE awards have gone unclaimed for the last several years.

11. *Given the underutilization of APLE awards, is the commission reviewing how awards are allocated to institutions and how the program is promoted in order to increase participation? What changes might be proposed to increase utilization?*

**Response:** As a fairly new commissioner, I was not under the impression that the APLE awards were underutilized. We have discussed the fact that CSAC staff are continuing to process loan assumption payments for teachers who taught during the 2006-2007 school year but have not yet submitted their forms. This could be a contributing factor in the number of unclaimed awards. The LAO's analysis raises a very important question about what we can do to improve on getting the word out about the benefits of the APLE loan assumption program, and more importantly getting the teachers to submit their forms back to CSAC in a timelier manner.





# HUNTER◀▶RUIZ

Research, Strategies & Advocacy

2 January 2008

The Honorable Don Perata  
Chairman, Senate Rules Committee  
State Capitol, Room 420  
Sacramento, California 95814-4900

Senate Rules Committee

JAN 03 2008

Re: Response to Request For Goals Statement  
Confirmation to Western States Water Council

Appointments

Dear Chairman Perata:

This serves to respond to your letter of December 13, 2007, requesting a statement of short and long-term goals for my service as a member to the Western States Water Council (Council).

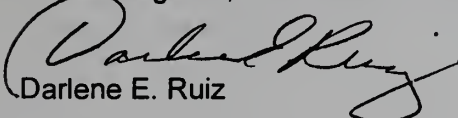
My long-term goal is to provide consistent, reliable information concerning California water issues to the Council. As one of three members, it will be important that I should coordinate with the representative from the Department of Water Resources and with the other public member in order to assure coordination of message and to better distribute functions within the Council.

In light of my background in water quality matters I will work to better understand and communicate emerging water quality issues and policies in order to contribute to the Council's dialogue. A second and equally important goal will be to listen to the concerns and issues of other state's in order to better inform California water quality officials of resource issues in the western states.

I do not view my role as that of a policy maker but as a facilitator sharing and receiving water quality information in order to provide another dimension for California water regulators to better perform their jobs. As such the measure of the success of my participation on the Council, short and long term, will be the scope and extent of familiarity that California water regulators have with my participation on the Council.

Thank you for considering my qualifications and desire to serve. I respectfully urge Senate Rule's aye votes in confirmation of my appointment as a member of the Western States Water Council.

Kindest regards,

  
Darlene E. Ruiz



## ATTACHMENT

### Statement of Lester Snow, Director, Department of Water Resources Western States Water Council Member Confirmation Hearing

#### Background

The Western States Water Council (Council) is composed of 18 states having highly diverse interests, capabilities, and policies with respect to management of water resources. The Council strives to operate on a consensus basis. As described in the Council's mission statement excerpted below, a major purpose of the organization is to provide an information sharing forum for states.

*The Western States Water Council is an organization consisting of representatives appointed by the governors of 18 western states. Since its creation, through adoption of a resolution at the Western Governors' Conference in 1965, the Council has strived to fulfill its chartered purposes. The purposes of the Council are: (1) to accomplish effective cooperation among western states in the conservation, development and management of water resources; (2) to maintain vital state prerogatives, while identifying ways to accommodate legitimate federal interests; (3) to provide a forum for the exchange of views, perspectives, and experiences among member states; and (4) to provide analysis of federal and state developments in order to assist member states in evaluating impacts of federal laws and programs and the effectiveness of state laws and policies.*

In 2006, the Council assisted the Western Governors' Association (WGA) in preparation of a WGA report titled *Water Needs and Strategies for a Sustainable Future*. That report contained numerous recommendations that WGA and the Council are in the process of implementing; following up on the report's recommendations presently constitutes a significant part of the Council's workload. The Council plans to submit a report to WGA in 2008 summarizing implementation of the report's recommendations and detailing further potential recommended actions.

California is unique among Council member states in terms of its large population and correspondingly sizable water infrastructure and water management programs – we are the only member state, for example, to have a State Water Project. Our particular role on the Council has primarily been one of providing the other states with the benefit of our experience and joining when appropriate with the other states to influence federal water policies and programs. More generally, the Council provides an opportunity for states to form partnerships to address subjects of mutual interest such as the need for adaptation in the face of climate change.

**Senate Rules Committee**

FEB 01 2008

**Appointments**



### Short-Term Goals

My short-term (this year) goals are focused on aspects of the Council's present workplan and implementation of WGA report recommendations. Some specific examples include:

► **Climate change** Several recommendations in the WGA report speak to the need to prepare for climate change impacts, including working with the federal government to encourage adaptation research, and improving communications between the scientific community and users of climate information. California is a leader among the Western states on the subject of climate change impact assessment and adaptation planning; this is a subject area where we can provide guidance and suggestions for Council member states. Last year, the Department organized a workshop on climate change research needs that was cosponsored with the Council and with WGA. I anticipate that we will organize a follow-up event for the Council in the coming year. We are also exploring the possibility of bringing together WGA with representatives of the federal Climate Change Science program (CCSP) to provide state input into the development of a new strategic plan for this roughly \$2 billion dollar per year program.

► **Farm Bill water conservation programs** As you are probably aware, Congress is considering passage of a new Farm Bill. Thanks to the efforts of the Council and others, the bill contains a new provision for federal financial assistance for agricultural water conservation. Unlike historical U.S. Department of Agriculture (USDA) assistance programs that are limited to on-farm level assistance for producers, the proposed new program would allow assistance to be provided for regional-level (e.g. water district-level) conservation programs. I anticipate working through the Council to influence USDA's development of regulations for the program such that the program could aid in carrying out California agricultural conservation efforts.

► **Infrastructure** Several of the WGA report recommendations deal with the need for repair, rehabilitation, or replacement of aging water infrastructure. Specific action items include fostering intergovernmental partnerships to identify and follow up on infrastructure needs (especially with regard to federal funding programs), and bringing together Western stakeholders to design and prioritize solutions to infrastructure challenges. In light of recent agreements on Colorado River shortage management and the subsequent focus on potential system efficiency and augmentation projects with Mexico, I anticipate working through the Council and other forums to focus on a particular aspect of unmet infrastructure needs – federal funding for water infrastructure along the international boundary. I also anticipate that the Department will take the lead in sponsoring a conference to better understand US/Mexico border water infrastructure needs. Additionally, the Council plans to hold scoping workshops in 2008 on infrastructure financing needs.

► **Drought** The Council and WGA have been sponsors of the proposed National Drought Preparedness Act (not yet enacted) and the National Integrated Drought Information System (NIDIS) (enacted two years ago). The federal agencies are in initial stages of NIDIS implementation; the Council has been involved with the agencies in scoping the effort.

► **Invasive species** The invasive quagga mussel has now been detected in the Colorado River system and associated aqueducts or reservoirs in Southern California, Southern Nevada, and Central Arizona. State and federal wildlife agencies are collaborating on actions to attempt to limit the mussel's spread into other waters; in California, the Department is participating in the efforts to contain the mussel's expansion. The Council will be useful in coordinating with member states for the development of outreach materials and educational efforts intended to raise awareness of the problems caused by spread of the mussel, and to promote actions to manage the infestation.

### Long-Term Goals

My over-arching long-term goal is to take advantage of partnership opportunities presented by the Council, especially as they relate to the ability to influence federal water-related programs and their funding. Just as the Council was successfully engaged in seeking to have broader water conservation programs included in a new Farm Bill, there are additional upcoming opportunities in other federal authorizing legislation, including reauthorization of the U.S. Global Change Research Act. The Council has historically been very active in supporting appropriations for sorely needed federal water data collection programs, and is likely to begin playing a similar role with respect to federal infrastructure funding.

I would observe that the federal government has been abdicating its financial responsibilities here in California, in terms of carrying its share of the load for water management and ecosystem restoration programs in the Bay-Delta and Central Valley. This situation is not unique to California, our sister Western states share similar experiences. While we may not be able to overcome some aspects of the federal budgetary situation, I believe that there may be opportunities for more constructive engagement with federal agencies on meeting shared water management needs.

Along these lines, I am heartened by a new partnership effort that the Council is developing with the U.S. Army Corps of Engineers via a memorandum of understanding executed between the two entities. Presently being conducted as something of pilot program focused on specific topics (e.g. watershed planning, climate change), the effort has the potential to draw other federal agencies into a formalized state-federal coordination process. I am hopeful that this nascent effort will lead to or translate into specific actions that the states could implement, and I will actively support carrying out pilot projects or similar efforts designed to



demonstrate a proof of concept. One interesting aspect of the presently ongoing discussions is that they offer the possibility of increased participation of federal agencies that have historically not been engaged with state water managers – such as the National Oceanic and Atmospheric Administration's climate programs.

I envision that the subject of infrastructure needs and federal funding mechanisms will be a central aspect of state-federal discussions as the Council's new process unfolds. In addition to the short-term work identified above for 2008, I plan to participate in the Council's longer-term efforts to identify and establish coalitions or partnerships to promote appropriate solutions for federal infrastructure funding needs.

For these longer-term efforts, I would define success as increased visibility and effectiveness of the Council and its member states in dealing with the federal government. There have been encouraging signs in some federal programs – such as NIDIS – of federal recognition of the states as partners – the challenge is to expand this thinking more broadly. Tools that may be of use to this end could include formal partnership agreements with federal agencies, specific pilot projects, or recognition in federal legislation.

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